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THE T. EATON COMPANY LIMITED

Draft - Jan. 7, 1971

DEVELOPMENT AGREEMENT AND
SCHEDULES

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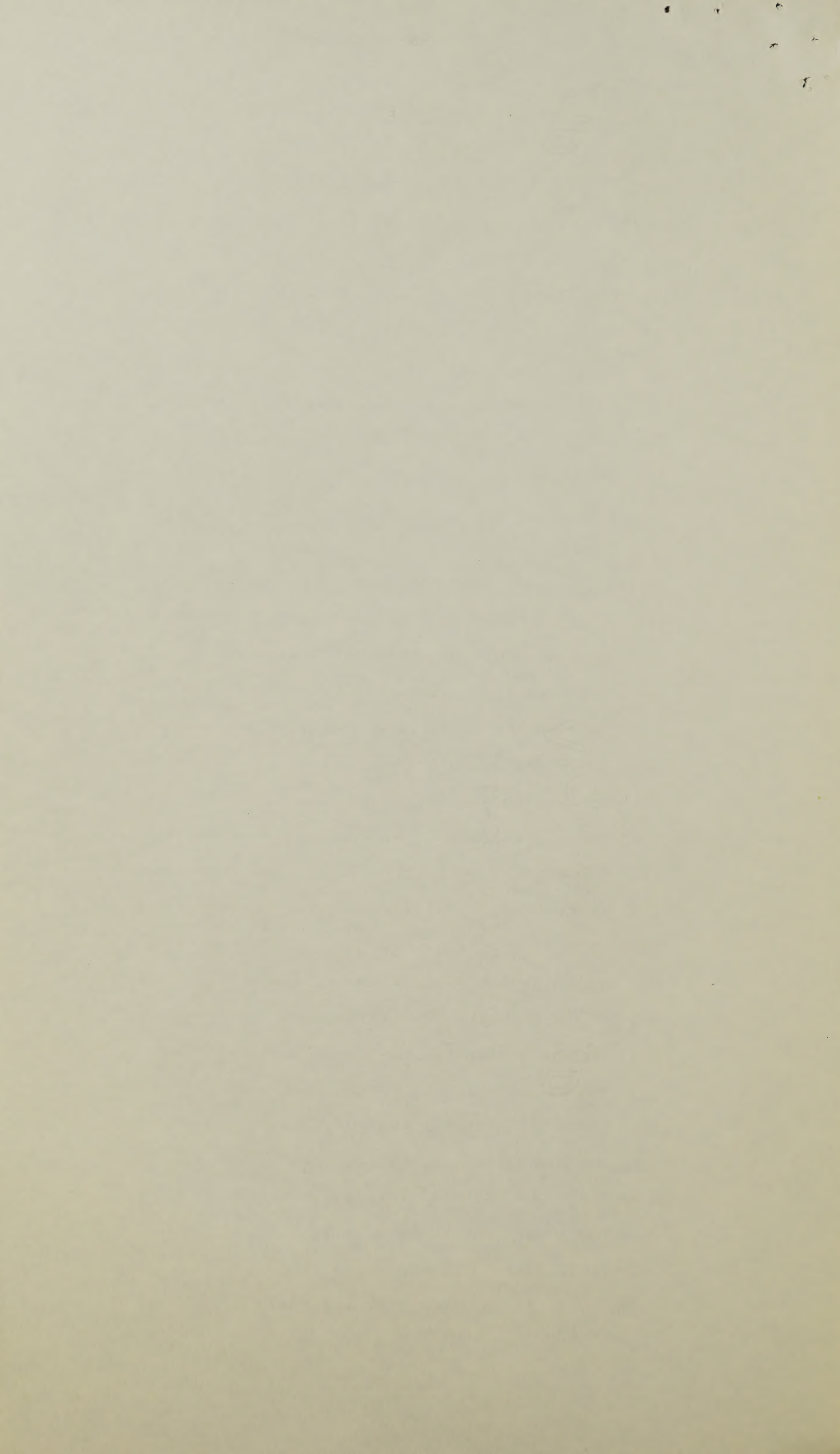
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Hamilton
Eaton T. Co.

DEVELOPMENT AGREEMENT

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SCHEDULES

- Schedule A: Plan marked to designate Part Five and Parcels A and B thereof together with Parcels C and D
- Schedule B: Schematic Design including site plans, building plans, elevations, sections, descriptions of nature of user, location, areas and heights of Improvements
- Schedule C: Form of Lease for Part Five

AGREEMENT made as of the 1st day of December, 1970.

B E T W E E N:

THE CORPORATION OF THE CITY OF HAMILTON

OF THE FIRST PART

- and -

THE T. EATON COMPANY LIMITED

OF THE SECOND PART

WITNESSETH that for valuable consideration the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01: Defined Terms

For the purpose of this agreement and the schedules hereto, the following expressions shall have the meanings respective hereinafter ascribed to them in this Section 1.01:

- (a) "Amended Renewal Scheme" shall mean the Redevelopment Plan for the Urban Renewal Area adopted pursuant to Section 20 of The Planning Act entitled "Civic Square Urban Renewal Scheme, City of Hamilton, October, 1965" as amended by Addendum No. 1 dated March 25th, 1966, by Addendum No. 2 dated November, 1966, by Addendum No. 3 dated April, 1969 and by Addendum No. 4 dated August, 1970 together with such further amendments as are lawfully made thereto from time to time;
- (b) "Architect" shall mean E. L. Hankinson acting as architect for Eatons or such other architect or architects as may be employed by Eatons in substitution for or in addition to E. L. Hankinson with the consent of the Review Authority which consent shall not be unreasonably withheld;
- (c) "Business day" or "day" shall mean any day of the week except Saturdays, Sundays and statutory holidays;

- (d) "City" shall mean The Corporation of the City of Hamilton;
- (e) "City Engineer" shall mean the City Engineer of the City or such person or persons as may be designated from time to time by the City to represent him;
- (f) "CMHC" shall mean Central Mortgage and Housing Corporation or any successor or assign representing Her Majesty the Queen in the right of Canada;
- (g) "Coordinator" shall mean the person acting as Coordinator, Lloyd D. Jackson Square Development appointed from time to time by the City acting under the direction of the City;
- (h) "Eatons" shall mean The T. Eaton Company Limited, a company incorporated under the laws of Ontario having its head office in the City of Toronto in the County of York in the Province of Ontario;
- (i) "Expropriations Act" shall mean The Expropriations Act, Chapter 36, Statutes of Ontario, 1968-69, and as it may be amended;
- (j) "Expropriations Procedures Act" shall mean The Expropriations Procedures Act 1962-63, Chapter 43, Statutes of Ontario, 1962-63 as amended;
- (k) "Final Working Drawings and Specifications" shall comprise the following documents:
 - (1) Completed site plans for the final development of a Parcel or a part of a Parcel to working drawing level of detail. These completed site plan drawings upon approval by the Review Authority will also serve as basic coordination drawings indicating the scope of work and responsibilities to be performed by or on behalf of the City and Eatons or either of them;
 - (2) Complete working drawings and specifications necessary for constructing the appropriate Improvement or Improvements;
 - (3) Statement of development proposal indicating

differences, if any, from 1.01 (v) below;

- (l) "Greater Hamilton Agreement" shall mean the agreement made as of September 30th, 1970 between the City, Greater Hamilton Developers Limited and Yale Properties Limited as amended by the First Amendment dated as of November 25th, 1970.
- (m) "Governments" shall mean collectively the City, CHMC and Ontario;
- (n) "Improvements" shall mean the buildings, fixtures and other works to be constructed or constructed by Eatons pursuant to the approved Final Working Drawings and Specifications or such plans as may have been approved by the Review Authority prior to the granting of a lease of Part Five or any portion thereof or the sale of Parcel C or D or any portion thereof;
- (o) "Municipal Board Act" shall mean The Ontario Municipal Board Act, Chapter 274, Revised Statutes of Ontario, 1960 as amended and as it may be further amended;
- (p) "net rentable area" shall be as defined in Schedule C hereto;
- (q) "OMB" shall mean the Ontario Municipal Board or any successor thereto;
- (r) "Ontario" shall mean Her Majesty the Queen in the right of Ontario;
- (s) "Parcel" or "Parcels" shall mean and include the following:
 - (1) "Parcel A" shall mean that area so designated on Schedule A hereto.
 - (2) "Parcel B" shall mean that area so designated on Schedule A hereto.
 - (3) "Parcel C" shall mean that area so designated on Schedule A hereto.
 - (4) "Parcel D" shall mean that area so designated on Schedule A hereto.
- (t) "Part Five" shall mean Parcels A and B.

- (u) "Planning Act" shall mean The Planning Act, Chapter 296, Revised Statutes of Ontario, 1960, as amended and as it may be further amended;
- (v) "Plans" shall comprise the following documents:
 - (1) A site plan and further plans at a scale of 1" = 50' or 1" = 40' developed in such detail as may be reasonably required by the Review Authority to illustrate the development of a Parcel completely. Without limiting the generality of the foregoing, the site plan or plans shall include at roof, plaza, concourse and service levels, the location and general character of the exterior details of development of such Parcel including pedestrian and vehicular circulation, landscaping, railings, fountains, sculpture, lighting, pools, street furniture, external materials for Improvements, number and type of parking facilities, utility lines and connections, existing and proposed grading, location and elevation of easements to be reserved to the City for services and utilities and proposed location and elevation of easements for services and utilities required by the development of such Parcel; location of delivery areas, service lanes, and proposed connections with tunnels and/or over passes and services outside such Parcel; the general relationship of the proposed Improvements and their integration with streets, buildings and improvements proposed or existing in that part of the Urban Renewal Area not included in but abutting such Parcel;
 - (2) Building drawings showing floor plans, elevations and sections drawn to a scale of one-sixteenth of an inch equals one foot (1/16" = 1') sufficient to illustrate fully the applicable part of the aforesaid plans and showing full detail

- of all gradings, signs, canopies, street levels, structures below grade, exterior materials and assemblies and other detail including any exposed mechanical equipment, intakes and vents;
- (3) Outline specifications for exterior materials and method of construction;
 - (4) Eye-level perspective sketches and/or models showing architectural and urban design characteristics of the development proposed, together with a rendered site plan showing the development of a Parcel and a schematic rendering of its relationship to all adjacent existing structures and streets in accordance with the detail then available to Eatons from the City;
 - (5) Details of development including dimensions and gross area of the appropriate Improvements and information respecting integration of work between Eatons and the City;
 - (6) Schedule for design review and completion of Final Working Drawings and Specifications;
 - (w) "Review Authority" shall mean the authority referred to in Section 2.05 hereof;
 - (x) "Urban Renewal Area" shall mean the redevelopment area designated by By-law No. 10781 as amended by By-law No. 66-76 enacted by the Council of the City on the 29th day of June, 1965 and the 22nd day of February, 1966, respectively and such changes in such area as may be lawfully made from time to time.

Section 1.02: Interpretation

The captions and headings in this agreement are inserted only for convenience of reference and do not define, limit or enlarge the scope, meaning or intent of any provision. This agreement shall be interpreted and governed by the laws of the Province of Ontario.

ARTICLE II

GENERAL

Section 2.01: Intent

The parties understand and agree that the purpose of this agreement, pursuant, inter alia, to the National Housing Act, 1954, Chapter 23, Statutes of Canada, 2-3 Elizabeth II, 1953-54, as amended and The Planning Act, is to implement a portion of the Amended Renewal Scheme for the Urban Renewal Area, the object of which scheme is to achieve the best possible combination of public and private uses of a high standard of urban design and function. In order to induce such redevelopment the Governments are bearing the cost of the acquisition and clearing of lands and buildings in the Urban Renewal Area and certain other costs in connection therewith. In addition, parts of the Urban Renewal Area have and will be developed by the City and others for public purposes.

Section 2.02: Approvals

It is a condition of this agreement that the City at its expense shall obtain all requisite consents, orders or other approvals from the appropriate municipal, provincial and federal authorities with respect to this agreement, to the form of ground lease hereto annexed as Schedule C, to the amendment of the Amended Renewal Scheme, if required, to the acquisition of Part Five by the City and to the leasing of Part Five to Eatons, and to other matters relating to the carrying out of this agreement and Eatons agrees to cooperate in the obtaining of such consents, orders or other approvals.

Section 2.03: Public Uses

Eatons agrees to design, construct and maintain the Improvements for the Parcels and such pedestrian and vehicular access thereto which by and subject to the terms hereof Eatons has agreed to construct so as to complement and achieve the best possible integration of their use, access and function

with adjacent public and commercial uses.

Section 2.04: Registration and Title

The parties agree that this agreement or a duplicate thereof shall be registered forthwith upon the execution of this agreement by the Parties. The City makes no representations or warranties as to the title of the Parcels. Eatons, at its expense, may proceed to place all or any of the Parcels under The Certification of Titles Act, Revised Statutes of Ontario 1960, Chapter 48, as amended, or under The Land Titles Act, Revised Statutes of Ontario, Chapter 204, as amended, and the City agrees to cooperate with Eatons in this respect and without limiting the generality of the foregoing to make available to Eatons all relevant surveys, documents and records in its possession or under its control. Save as aforesaid the preparation of all necessary additional plans and material shall be the responsibility of Eatons and it shall bear all costs in relation thereto.

Section 2.05: Review Authority

The Review Authority shall be the Coordinator until such time as the Coordinator holding office at the time of the execution of this agreement ceases to hold such office. His successor shall continue to act as the Review Authority until such time as either Eatons or the City upon notice in writing to the other, appoints a second member to the Review Authority in which event the other party shall forthwith appoint a third member, thus increasing the Review Authority to three members. If and when the Review Authority comprises three persons, two persons shall constitute a quorum and decisions shall be by majority vote; the Coordinator shall act as Chairman of the Review Authority. The City may appoint such advisers to the Review Authority as it deems necessary from time to time. The Review Authority shall promptly review any matters referred to it pursuant to the provisions of this agreement

and the Chairman shall convey in writing any required decision and/or approval within twenty days after any matter has been referred to it unless the said period of twenty days is altered by agreement in writing by the City and Eatons. In the event that the Review Authority fails to render a decision on any matter within the prescribed period such matter shall be deemed to have been approved. The City members of the Review Authority shall act on the direction of the City through a committee of the Council of the City reporting to the Council of the City.

ARTICLE III

LEASING OF PART FIVE AND GRANTING

OF PARCELS TO EATONS

Section 3.01: Agreement to Lease

(a) Subject to all the terms, covenants and conditions of this agreement, the City agrees to lease Part Five to Eatons and Eatons agrees to lease Part Five from the City, such lease to be in the form hereto annexed as Schedule C.

(b) Subject to the provisions of Section 5.02 Eatons may designate that the lease referred to in Section 3.01 (a) and its rights and obligations hereunder with respect to any of Parcels A or B be granted to a corporation (other than Eatons).

(c) Any reference in this agreement to a lease to Eatons or words to the like effect shall include a lease described in paragraph (b) above.

Section 3.02: Condition of Parcels at Times of Delivery of Possession

The City agrees that at the respective times of delivery of possession of Parcels A and B as hereinafter provided, Parcels A and B shall be free and clear of all buildings, structures and improvements, except streets, lanes and sidewalks and except walls, services, rubble and foundations below the

surface (surface to be as defined by the immediately adjoining sidewalk levels as they presently exist) except the stands and umbrella stands in the uncovered portion of the market on the Parcel B lands and the canopy projection from the southerly face of the Market Ramp Garage over the Parcel B lands. Except for the aforesaid obligations, the City makes no representations or warranties, either express or implied, as to the condition of the Parcels at the time of their delivery.

Section 3.03: Possession Schedule

Subject to the provisions of this agreement, and to approval under The Planning Act, the City agrees to lease Part Five to Eatons (as provided in Section 3.06 hereof) with possession being granted on January 20th, 1971 or such other date as may be agreed upon by the parties.

If the City shall be delayed in the delivery of possession of Part Five by January 20th, 1971 or such other date as may be agreed upon by the parties by any cause beyond the reasonable control of the City including any delays occasioned by any proceedings or acts of any persons occupying or having any interest in Part Five or immediately abutting lands either under The Expropriations Act (including such delays as may be occasioned by an inquiry under The Expropriations Act if such inquiry is not dispensed with under Section 6 (3) thereof), under The Expropriations Procedures Act or by any order or proceedings in any court of competent jurisdiction or by any other authority (including the OMB) or by reason of strike, lockout, war, rebellion, material or labour shortage due to national emergency, fire, flood, wind, water or other similar casualty or by any other matter not within its control and not caused by its fault or act of commission or omission and not avoidable by reasonable effort or foresight, then the time referred to above shall be extended for a period of time equal to the loss of time due to such delays, provided that if the period of such delay exceeds twelve months, the City and Eatons shall consult to determine if the circumstances

causing such delay can be corrected and if the period of such delay exceeds eighteen months, Eatons may by notice in writing to the City terminate this agreement and thereupon all its rights and obligations under this agreement shall cease.

Section 3.04: Development Schedule

1. Eatons agrees that the Improvements to be constructed will be in conformance with the provisions of this agreement and with the requirements as to number of square feet, location, maximum coverage at plaza level and maximum and minimum heights shown on Schedule B hereto (subject to reasonable modification on the approval by the Review Authority). Subject to the provisions of this agreement Eatons further agrees to complete the construction of the Improvements for a Parcel within the time limits set out in this Section 3.04:

<u>(a) Nature of Improvements</u>	<u>Commencement Date</u>	<u>Construction Period</u>	<u>Completion Date</u>
<u>PART FIVE IMPROVEMENTS</u>			
(i) Extension of approximately 9,000 square feet of existing store of The T. Eaton Company Limited on lands including Parcel A on Schedule A hereto and lands presently owned by The T. Eaton Realty Company Limited shown outlined in green on Schedule A hereto of which extension approximately 1760 square feet will be constructed on the Parcel A lands.	December 1st, 1970	One year, ten months and seventeen days	October 18th, 1972
(ii) Future expansion of approximately 45,000 square feet of The T. Eaton Company Limited store on lands designated as Parcel B on Schedule A hereto and on Parcel A and the lands owned by The T. Eaton Realty Company Limited shown outlined in green on Schedule A hereto; such expansion on the Parcel B lands shall have a minimum full coverage of two storeys.	The later of October 1st, 1975 or the third anniversary of the entering into of an agreement to complete construction of a second department store as part of Phase Two as defined and in accordance with the provisions of the Greater Hamilton Agreement.	Two years	The later of October 1st, 1977 or the fifth anniversary of the entering into of an agreement to complete construction of a second department store as part of Phase Two as defined and in accordance with the provisions of Greater Hamilton Agreement.

In the event that the Improvements referred to in Section 3.04 1 (a) (i) above are not commenced on the commencement date above set out, or if they are not completed on the completion date above set out, at the option of the City to be exercised by notice in writing, the lease of Part Five shall terminate as well as any rights to Parcel B and the rights to purchase Parcels C and D. In the event that the Improvements referred to in Section 3.04 1 (a) (ii) above are not commenced on the commencement date above set out, or if they are not completed on the completion date above set out, at the option of the City to be exercised by notice in writing, the lease with respect to that portion of Part Five shown as Parcel B on Schedule A hereto shall terminate as well as the rights to purchase Parcels C and D. ✓ Any revenues received by the City other than from Eatons with respect to the use of any portion of the Parcel A or Parcel B lands shall be credited against the rent payable by Eatons under the lease of such lands. Eatons agrees that the Hamilton Central Stall Holders Farmers' Market may continue to be operated on the Parcel B lands until sixty days after the delivery of notice in writing from Eatons to the City of its intention to begin its development of the Parcel B lands. The City shall move or cause to be moved the Hamilton Central Stall Holders Farmers' Market or other public activities from Parcel B sixty days after delivery of notice as aforesaid and remove the stands and umbrella stands in the uncovered portion of the market on the Parcel B lands and the canopy projection from the southerly face of the Market Ramp Garage over the Parcel B lands.

2. Eatons shall have the right to purchase the lands and premises comprised in Parcel C from the City on the following terms and conditions:

(a) Unless otherwise agreed to by the City Eatons shall have completed the Improvements on the Parcel A and B lands in accordance with the provisions of this agreement.

(b) The Parcel C lands will be used for a future expansion

of the department store of The T. Eaton Company Limited so that the total expansion on Parcels A, B and C shall have a minimum gross floor area of twice the aggregate land area of Parcels A, B and C. The said expansion shall be commenced forthwith upon the purchase of the Parcel C lands and shall be completed thirty months after the date of purchase of the Parcel C lands.

- (c) Eatons shall have the right to purchase the Parcel C lands on or before October 19th, 1978. Should Eatons fail to commence the construction of the said expansion on the Parcel C lands on or before October 19th, 1978, Eatons shall pay to the City monthly in arrears an amount calculated at the rate of \$25,000 per annum from October 19th, 1978 until the earliest of (i) the commencement of construction of the said expansion on Parcel C, (ii) October 19th, 1980 or (iii) the date on which at any time prior to October 19th, 1978 the City and Eatons have agreed to terminate Eatons' right to purchase Parcel C and Parcel C is being developed by another developer. Provided it makes the said payment to the City, Eatons shall, until October 19th, 1980, continue to have the right to purchase the Parcel C lands from the City. Should Eatons fail to exercise its right to purchase as aforesaid, at the option of the City to be exercised by notice in writing, all Eatons' rights to purchase Parcels C and D shall terminate and the City shall be free to use or dispose of the said Parcel C and D lands as it may see fit.
- (d) If Eatons exercises its right to purchase the Parcel C lands as aforesaid, it shall carry out and shall bear all the costs involved in the demolition of any overhead pedestrian connections over the Parcel C lands between the Eatons department store and Market Ramp Garage and of that portion of the Market Ramp

Garage on the said lands and the costs of effecting the necessary modifications to the remainder of the said Market Ramp Garage on Parcel D so as to permit its continuing use as a public parking facility.

- (e) (i) From the date hereof until October 18th, 1975, the purchase price to be paid for the Parcel C lands shall be the market value of the land as at January 1st, 1971 as agreed upon by independent appraisers appointed by each of the City and Eatons or failing agreement, by arbitration pursuant to the provisions of Section 5.08 hereof, such market value to be established on or before March 1st, 1971 and the said purchase price shall be the said market value as so determined plus an additional 10% of the said market value per annum from October 19th, 1970 until the right to purchase the said lands is exercised plus the then current market value of the building on such lands (the value of the Market Ramp Garage to be determined by quantity surveyors for each of the parties employing MacLean's Building Index or a comparable Successor index, the determination of such value to be subject to arbitration). The said purchase price shall be abated by an amount equal to the value of any damage or destruction of the Market Ramp Garage prior to the date of purchase. The said purchase price shall not include the value of any capital expenditures made with respect to the Market Ramp Garage by the City in excess of \$25,000 in any year during the currency of this agreement.
- (ii) During the period from October 19th, 1975 to October 19th, 1980 the purchase price to be paid for the said Parcel C lands shall be the market value of the lands as at October 19th, 1975 as agreed upon within ninety days of October

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19th, 1975 by independent appraisers appointed by each of the City and Eatons, or failing agreement by arbitration pursuant to the provisions of Section 5.08 hereof and the said purchase price shall be the said market value as so determined plus an additional 10% of the said market value per annum from October 19th, 1975 until the right to purchase the said lands is exercised plus the value of the building on the said lands (the value of the Market Ramp Garage to be determined by quantity surveyors for each of the parties employing MacLean's Building Index or a comparable successor index, the determination of such value to be subject to arbitration). The said purchase price shall be abated by an amount equal to the value of any damage or destruction of the Market Ramp Garage prior to the date of purchase. The said purchase price shall not include the value of any capital expenditures made with respect to the Market Ramp Garage by the City in excess of \$25,000 in any year during the currency of this agreement.

3. Eatons shall have the right to purchase the lands and premises comprised in Parcel D from the City on the following terms and conditions:

- (a) Unless otherwise agreed to by the City, Eatons shall have completed the Improvements on the Parcel A, B and C lands in accordance with the provisions of this agreement.
- (b) The purchase of the said Parcel D lands shall be completed on or before October 19th, 1985 provided that Eatons shall pay monthly in arrears to the City an amount calculated at the rate of \$7,500 per annum from the date on which the City no longer has the use of that portion of the Market Ramp Garage on the Parcel C lands by reason of Eatons having exercised

its right to purchase the Parcel C lands until the earlier of the date on which Eatons exercises its right to purchase the said Parcel D lands or October 19th, 1985 unless Eatons has by agreement with the City, terminated its rights to purchase Parcels C and D or unless its rights to purchase the said Parcels have been terminated by the City pursuant to the provisions of this agreement. Should Eatons fail to exercise its right to purchase as aforesaid, at the option of the City to be exercised by notice in writing, all Eatons rights to Parcel D shall terminate and the City shall be free to use or dispose of the said Parcel D lands as it may see fit. The parties understand that the area of the Parcel D lands may be reduced by a future widening of Merrick Street.

- (c) If Eatons exercises its right to purchase the Parcel D lands as aforesaid, it shall carry out and bear all the costs involved in the demolition of that portion of the Market Ramp Garage on the said lands.
- (d) The purchase price to be paid for the Parcel D lands shall be the market value as at the date of the delivery of notice by Eatons of the exercise of the right to purchase which shall be not less than three months nor more than four months from the proposed date of closing. The said market value shall be as agreed upon by independent appraisers appointed by each of the City and Eatons or failing agreement, by arbitration pursuant to the provisions of Section 5.08 hereof, such market value to take into account the value of the building on the said lands (the value of the Market Ramp Garage to be determined by quantity surveyors for each of the parties employing MacLean's Building Index or a comparable successor index, the determination of such value to be subject to arbitration), the use to be made of the said Parcel D lands by Eatons and the other provisions

of this agreement. The said purchase price shall be abated by an amount equal to the value of any damage or destruction of the Market Ramp Garage prior to the date of purchase. The said purchase price shall not include the value of any capital expenditures made with respect to the Market Ramp Garage by the City in excess of \$25,000 in any year during the currency of this agreement.

- (e) The use to be made of the said Parcel D lands shall be subject to the approval of the City which approval is within the sole discretion of the City. Greater Hamilton Developers Limited shall be consulted with respect to the proposed use. Fifteen months prior to the date Eatons proposes to purchase the Parcel D lands from the City, Eatons shall advise the City of the use proposed to be made of the Parcel D lands and within the next three months, such use or alternative uses shall be considered by the City and the City shall approve or disapprove of the use proposed to be made of the Parcel D lands. In the event of disapproval all Eatons' rights to purchase the Parcel D lands shall terminate in the event of approval of the said use by the City. Plans or Final Working Drawings and Specifications for the development of the said Parcel D lands shall be submitted to the City nine months prior to the date on which Eatons proposes to purchase the said Parcel D lands. The City shall forthwith upon receipt of such Plans or Final Working Drawings and Specifications review the same and within 30 days of the receipt of such Plans or Final Working Drawings and Specifications, the City may revise the same by delivering the revisions and the reasons therefor to Eatons and within 30 days after the delivery to Eatons of such revisions and reasons Eatons may further revise such Plans or Final Working Drawings and Specifications by

delivering its further revisions and the reasons therefor to the City. The delivery of such revisions and further revisions and the reasons therefor shall continue until such Plans or Final Working Drawings and Specifications as so revised have been approved by the party to whom they or such revisions or further revisions and the reasons for the same were last delivered. Such Plans or Final Working Drawings and Specifications as so revised shall be deemed to have been approved by the party to whom such Plans or Final Working Drawings and Specifications or such revisions or further revisions and the reasons for the same were last delivered if such party fails to deliver its revisions or further revisions and the reasons for the same within the time aforesaid. Once this review process has been completed and in any event no later than seven months after the initial delivery to the City of the said Plans or Final Working Drawings and Specifications, the City shall notify Eatons in writing as to whether it approves or disapproves of the proposed development of the Parcel D lands. In the event of disapproval all Eatons' rights to purchase the Parcel D lands shall terminate.

- (f) If the purchase price to be paid for the said Parcel D lands has not been agreed upon or determined by arbitration on October 19th, 1985, then the time for closing such purchase shall be extended for a period ending sixty business days after the determination of such purchase price.

4. Eatons and the City acknowledge that by agreement of even date herewith made between Eatons, the City and Greater Hamilton Developers Limited, Greater Hamilton Developers Limited was granted the right to negotiate an agreement for the development of Parcels A, B, C or D should Eatons' rights with respect to any one or more of the said Parcels be terminated by the City, the right of Greater Hamilton Developers Limited so to negotiate

to be for a period of six months after any such termination by the City.

5. Should the City, Greater Hamilton Developers Limited or Yale Properties Limited be in default under the Greater Hamilton Agreement with respect to Phase One or Phase Two as defined therein, Eatons may at its option terminate this agreement, the lease of the Part Five lands or Parcel B thereof and any other agreement relating to the development contemplated hereunder and thereupon the Part Five lands or Parcel B thereof as the case may be and the Improvements thereon, if any, shall revert to the City and all of Eatons' rights to purchase Parcels C and D shall terminate.

6. If Eatons is delayed in the commencement or completion of the Improvements above referred to by the inability of the City to deliver possession of a Parcel when Eatons is otherwise entitled thereto, or by reason of strike, lockout, war, rebellion, material or labour shortage due to national emergency, fire, flood, wind, water or other similar casualty, or by any other matter not within its reasonable control and not caused by its default or act of commission or omission and not avoidable by reasonable effort or foresight, then the respective time for commencement and completion of the development of Parcels A, B, C or D shall be extended by a period or periods equal to the time lost due to such delays.

7. The City agrees that on the respective dates for the granting of possession of any of Parcels A, B, C or D, there will be no encumbrance of any of the said lands.

Section 3.05: Review Process

(a) Eatons shall employ such architects, engineers, solicitors, consultants and others so as to provide the City with the information required to ensure the expeditious completion of the review of Eatons' plans, design and landscaping at all stages.

The architectural, landscape and other advisers to the Review Authority shall report directly to the Coordinator

and shall work with the Architect and Eatons so as to ensure that there is a continuous and effective process of design and landscaping review. The said review process shall include such matters as landscaping, entrances, pedestrian movement and amenities, visual integration and physical interconnections with other elements of the Amended Renewal Scheme and the surrounding area including truck access, public transportation and parking, the selection and use of materials for the exterior of all Improvements, public areas and interior streets of shopping malls but shall exclude the interior of Eatons' department store. Four copies of the Plans, Final Working Drawings and Specifications and such reports, and other data and information as may be requisite for the implementation of the development of a Parcel shall be delivered to the Review Authority at least seven days, or such greater or lesser time as may be agreed upon, before any such material is to be discussed. In the event of default by Eatons under this agreement, all plans, studies, models, Plans, Final Working Drawings and Specifications, reports, submissions and documents prepared by or for Eatons in connection with the Parcels and/or Amended Renewal Scheme except for any such material that relates to the interior design of Eatons' department store shall become the property of the City free from any claim of copyright by anyone whomsoever.

All signs, lighting, receptacles, benches, landscaping, planters, poles, standards, sculpture, fountains, pools, grassed areas, plantings, street furniture and other aesthetic detail proposed by Eatons for a Parcel or Parcels (but not including the interior design and fixturing of Eatons' department store) shall be subject to the approval of the Review Authority in order to assure that they are integrated with the character of the Improvements and with the remainder of the Amended Renewal Scheme so as to achieve a high standard of urban and landscape design. The City shall cooperate with Eatons in the execution of the works to be performed by the City pursuant to the Amended Renewal Scheme and the City and Eatons shall cooperate and agree as to the best methods of coordinating the construction

of Improvements in areas where the Parcels abut the remainder of the Urban Renewal Area including exterior material to be used therefor and the design thereof. Eatons agrees that all signs proposed by it for the Improvements and intended by it to be visible from the exterior of the Improvements must be integrated with the overall design and shall not adversely affect its aesthetic qualities; the design, placement and number of such signs to be subject to the approval of the Review Authority which approval shall not be unreasonably withheld.

(b) During the course of construction of the Improvements on any Parcel Eatons will upon the reasonable request from the City from time to time, deliver to the City a certificate of a firm of chartered accountants satisfactory to the City that they have examined the balance sheet of Eatons upon receipt of such request from the City and that such balance sheet discloses an excess of current assets over current liabilities of more than ten million dollars. Such certificate shall also show Eatons' continuing financial ability to complete the Improvements and that Eatons has satisfactory long term financing arrangements as related to the construction of the Improvements on such Parcel. Without limiting the generality of the foregoing, Eatons shall forward to the City satisfactory evidence of the progress payments to its construction or building company together with the billings therefor and evidence of the payment of the final billing.

Both before and after the commencement of construction of the Improvements for any Parcel, the City shall have the right to participate in the formulation of any financial plan whenever such plan requires alterations to be made to this agreement or the form of ground lease annexed hereto as Schedule C.

Section 3.06: Leasing of Part Five

1. When the City has approved the Plans or the Final Working Drawings and Specifications for the Improvements to be constructed on Parcel A of Part Five, the

City agrees to enter into a lease with Eatons in the form hereto annexed as Schedule C provided that the following conditions have been satisfied:

- (a) Part Five shall have been acquired by the City pursuant to the provisions of Section 3.03 hereof;
- (b) The approval of CMHC and Ontario to the leasing of the Part Five shall have been obtained;
- (c) An agreement pursuant to Section 20 (9) of The Planning Act shall have been executed or there shall have been other compliance with the said subsection and such other orders or approvals as may be required pursuant to the provisions of Section 2.02 hereof shall have been obtained;
- (d) Eatons shall have deposited with the City a copy of a contract, reasonably satisfactory in form and content to the Review Authority, with a construction or building company under which such construction or building company shall have full and continuing responsibility to Eatons for the construction and completion of the Improvements on the Parcel in accordance with the provisions of this agreement;
- (e) Eatons shall have provided the City with policies of insurance satisfactory to the Review Authority to be maintained in force at the sole cost and expense of Eatons until the completion of the construction of such Improvements:
 - (i) Protecting both Eatons and the City (without any rights of subrogation against the City) against claims for personal injury, death or property damage or third party or public liability claims arising from any accident or occurrence upon, in or about the Parcel and from any cause including the risks occasioned by the construction of the Improvements (unless such liability arises through the negligence of an officer, employee or servant of the City while acting

within the scope of his duties or employment)
to an amount of not less than \$2,000,000 for
any personal injury, death, property or other
claims in respect of any one accident or occurrence;
and

- (ii) Protecting both Eatons and the City from loss or damage (without any rights of subrogation against the City) to the Improvements and all fixtures, equipment and building materials on the Parcels from time to time, both during and after construction (which may be by policies effected from time to time covering the risk of different phases of construction) against fire, all other perils from time to time customarily included in the usual extended coverage endorsements on fire policies applicable to similar properties during construction and effected in Ontario by prudent owners and such other perils as the City may reasonably require to be insured against, to the full insurable value thereof at all times (to be computed upon a replacement cost basis with deduction only for the cost of excavation and foundations) and in any event there shall be no co-insurance provision;
- (f) The City shall have issued a building permit for such Improvements;
- (g) Eatons shall have complied with any other municipal or governmental laws, by-laws or regulations;
- (h) Eatons shall have furnished evidence satisfactory to the City that Eatons has sufficient mortgage and equity commitments to enable the City to satisfy itself that Eatons has the financial resources and/or financial commitments and general financial ability adequate for the construction and completion of all Improvements to be constructed for the Parcel in accordance with the provisions of this agreement.

Evidence of such general financial ability shall be in the form of the certificate referred to in Section 3.05(b) hereof.

- (i) Eatons shall have caused its contractor to furnish at the sole cost and expense of Eatons or its contractor, a performance of contract bond with respect to the completion of such Improvements, which performance of contract bond shall make Eatons the sole obligee and insured, shall be in form satisfactory to the City and shall be with a surety company licensed to do business in the Province of Ontario, provided that if such a bond is not required by Eatons' mortgagee or financiers, there shall be no obligation to furnish such a bond. At the option of the City, upon notice in writing, Eatons shall assign its rights as obligee of such performance of contract bond to the City and Eatons shall upon request of the City assign its rights for the enforcement of the said contract to the City.

Sub-paragraphs (d) to (i) inclusive of the foregoing conditions shall also be satisfied prior to the commencement of the construction of the Improvements for Parcel B. The City shall also have approved the Plans on the Final Working Drawings and Specifications for the Improvements to be constructed on Parcel B of Part Five prior to the commencement of such construction.

The foregoing conditions are inserted for the sole benefit of the City and the City may, by notice in writing, waive any of them in whole or in part without prejudice to the remedies of the City in the event of the non-fulfilment of any other condition or conditions.

2. (a) The annual basic rent to be paid for Part Five for the first period of the term, as defined in the form of ground lease hereto annexed as Schedule C shall

be the greater of

- (i) that amount calculated by multiplying the number of square feet of land leased in connection with Part Five by 48¢ or
- (ii) the sum of that amount calculated by multiplying the number of square feet of land leased in connection with Part Five by 12¢ plus that amount calculated by multiplying the number of square feet of net rentable area of Improvements constructed when the same are deemed to be completed for assessment purposes by 10¢.

Section 3.07: Copies of Insurance Bonds
and Payment of Premiums

Eatons shall pay all premiums and costs of all insurance and bonds required to be effected by Eatons under any provision of this agreement and shall from time to time file with the City certificates sufficient to show and establish accurately, at all times, the current status of policies and bonds in force and in particular shall submit to the City before the expiration of every current policy or bond, evidence of the renewal of such policy or bond or the issuance of a replacement policy or bond and of the payment of all premiums due for such renewal or replacement, and shall promptly notify the City of any cancellation or intended cancellation by any insurer of any policy or bond or any circumstances known to Eatons materially affecting its coverage. Eatons shall not cancel the insurance coverage required hereunder without the prior written consent of the City, which consent shall not be unreasonably withheld. Each policy or bond shall provide that no cancellation shall be effective without prior notice by the insurer to the City. If Eatons shall be in default with respect to any of its obligations under this agreement regarding insurance or bonds, including the obligation to submit proof of insurance or bonds to the City, the City may, but shall not be obliged to, place any such insurance or obtain such a bond at the cost and expense of Eatons or pay any arrears of premium, and any

expense incurred by the City shall be reimbursed to it by Eatons as a liquidated debt on demand.

ARTICLE IV
DEVELOPMENT

Section 4.01: Non-Discrimination

Eatons agrees that it will not discriminate in its employment practices in the course of construction or in the use of, leasing or occupancy of any portion of the Improvements by reason of race, colour, religion or national origin.

Section 4.02: Maintenance of Insurance During Construction

At all times during the course of construction of any Improvement or Improvements Eatons shall at its own expense maintain policies of insurance in accordance with Section 3.06.

Section 4.03: Workmen's Compensation

At all times during the course of construction of any Improvement or Improvements Eatons shall at its own expense procure and carry or cause to be procured and carried and paid for full Workmen's Compensation coverage in respect of all workmen, employees, servants and others engaged in or upon any Improvements.

Section 4.04: Construction of Improvements

(a) Compliance with Final Working Drawings and Specifications; Unauthorized Structures and Materials

All work done on the construction of the Improvement or Improvements to be located on any Parcel or Parcels shall substantially conform with the approved Final Working Drawings and Specifications, or the Plans approved by the Review Authority prior to the granting of possession of a Parcel, except and only to the extent that modifications thereof have been requested by Eatons in writing and have been approved in writing by the Review Authority which

approval shall not be unreasonably withheld. In the event that Eatons shall fail to comply with the foregoing requirements, the Review Authority may, after discovery thereof by it, direct in writing that Eatons so modify or reconstruct such portion or portions of the Improvements erected or being erected on the Parcel or Parcels as are not in conformance with the approved Final Working Drawings and Specifications or the said approved Plans or any approved modifications thereof, so as to bring them into conformance therewith. Eatons shall forthwith comply with such a directive and on its failure so to do within a reasonable period of time after such notice, it shall be lawful for the City or its servants, contractors, agents and workmen together with necessary equipment to enter upon the Parcel or Parcels and reconstruct or remove such unauthorized Improvements and execute such other requisite work, all expenses of so doing to be paid to the City by Eatons as a liquidated debt on demand in writing from the Review Authority. If in the course of erecting and completing the Improvements Eatons shall use any materials or execute any works which are found to be unsound or unfit for the purpose intended or which will not be in accordance with any statute, regulations or by-laws or comply with the said approved Final Working Drawings and Specifications or said approved Plans, Eatons shall immediately upon notice in writing from the Review Authority requiring it so to do, remove all such non-complying materials and substitute such other materials as shall be fit and sound for the purpose intended and in conformity with any statute, regulations or by-laws or the said approved Final Working Drawings and Specifications or the said approved Plans and make good, repair and correct any such non-complying materials and shall also repair and make good any

defects and omissions in the aforesaid Improvements within such time as may be specified in such notice at its expense. If Eatons shall neglect so to do for a reasonable time after such notice it shall then be lawful for the City or its servants, contractors, agents and workmen to remove such non-complying materials and to substitute others therefor and all expenses of so doing shall be paid to the City by Eatons as a liquidated debt on demand in writing from the Review Authority.

(b) Completion

Eatons shall begin the construction of the Improvements on the Parcel or Parcels in accordance with the Final Working Drawings and Specifications or Plans as approved by the Review Authority as soon as reasonably possible after delivery of possession of the Parcel or Parcels and shall, subject to Section 5.07, diligently prosecute to completion the construction of the Improvements on the Parcel or Parcels and shall, subject to the provisions of this agreement complete such construction within the construction period and not later than the latest date for completion of construction as provided in Section 3.04. Eatons, with the approval in writing of the City, may temporarily occupy and landscape and improve lands owned by the City adjacent to a Parcel or Parcels then acquired by Eatons for the purpose of temporarily enhancing the environs of a developed Parcel or Parcels, for the purpose of a temporary site office or for other temporary purposes on such terms and conditions as may be agreed upon in writing by Eatons and the City. Eatons shall submit to the Coordinator an estimated construction schedule at the time construction is commenced. Further detailed construction schedules shall be submitted from time to time to the Coordinator until the construction of the Improvements has been completed

with actual progress shown. In addition Eatons shall submit periodically a written report setting out any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts. Eatons agrees at all times to cooperate with the Coordinator and to provide him with such reasonable information as may be required to enable him properly to supervise the network analysis and critical path programme with respect to the Amended Renewal Scheme. The construction of any Improvements shall be deemed to be completed when the Review Authority has, upon the application of Eatons after the completion of such Improvements, issued a certificate certifying that such Improvements have been completed in conformity with the Final Working Drawings and Specifications, with such modifications, if any, as may have been approved hereunder. No such certificate shall be issued if there is any existing breach by Eatons of any obligation under this agreement or if there is any lien or other claim outstanding in respect of such construction except claims for completion payments by contractors not exceeding the amounts which Eatons is required to retain under the provisions of The Mechanics' Lien Act and except for such amounts required to be so retained, all accounts for work, services or materials which could give rise to any claim for a mechanics' lien shall have been paid; no building fixtures or equipment on Part Five (save for usual tenants' fixtures normally removeable by them as permitted in the form of lease hereto annexed as Schedule C and to which Eatons does not have title) shall be subject to any conditional sale agreement or to any lien, encumbrance or claim not expressly permitted by the foregoing. Upon application for a certificate of completion the Review Authority shall promptly consider such

application and in the event that there are grounds for disapproval, these shall be communicated in writing in detail to Eatons within seven days of the Review Authority having received such application. In the event of such disapproval, Eatons shall within forty days resubmit its application for a certificate of completion which shall be subject to the same conditions as are above set out for an original application. It is understood and agreed that the foregoing provisions relate only to applications by Eatons for a final completion certificate pertaining to the Improvements from time to time and which said application is predicated upon the final completion certificate of the Architect. Nothing in this paragraph shall be deemed to prevent or interfere with Eatons' right to receive advances of moneys which it is otherwise entitled to obtain on the strength of the certificate or certificates of the Architect.

(c) Right to View

The Coordinator and his authorized representatives shall have the right at all reasonable times to enter upon any Parcel or Parcels and the Improvements being constructed thereon to view the state of progress of the same and to inspect and test material and workmanship and for the purpose of ascertaining generally that the provisions of this agreement are being complied with and, with contractors and equipment upon default by Eatons as herein mentioned, to enter upon any Parcel or Parcels and Improvements thereon for the purpose of protecting, completing, repairing and maintaining the same generally.

(d) Disposal of Material

Eatons agrees to comply with the reasonable direction of the City Engineer as to the place of disposal of material excavated from any Parcel or Parcels and the route or routes to be adopted by the vehicles taking such materials from the Parcel

or Parcels to the place of disposal and returning to the Parcel or Parcels therefrom.

(e) Mechanics' Liens

Eatons shall throughout the course of construction of the Improvements at its own cost and expense cause any and all mechanics' liens and other liens for labour, services or materials alleged to have been furnished or to have been charged by or for Eatons or any one on its behalf at the Parcels or the Improvements, which may be registered against or otherwise affect the Parcels or the Improvements, to be paid, satisfied, released, cancelled and vacated within 30 days after the City shall send to Eatons written notice by registered mail of any claim for such lien. Provided, however, that in the event of a bona fide dispute by Eatons of the validity or correctness of any claim for any such lien Eatons shall not be bound by the foregoing but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into court the amount claimed and such costs as the court may direct and registering all such documents as may be necessary to discharge such lien, or providing such other security in respect of such claim as will result in the discharge of such lien, provided always that neither Part Five nor the Improvements nor any part thereof, nor Eatons' interest therein shall thereby become liable to forfeiture or sale. The City may, but shall not be obliged to, after the expiration of thirty days after Eatons has received notice as aforesaid, discharge any lien filed or registered if in the City's judgment, Part Five or the Improvements or any part thereof or Eatons' interest therein becomes liable to any forfeiture or sale or is otherwise in jeopardy and any amount paid by the City in so doing, together with all reasonable costs and expenses of the City

shall be reimbursed to the City by Eatons on demand together with interest at the rate of 9 per cent per annum from the date incurred until paid. Nothing herein contained shall authorize Eatons, or imply any consent or agreement on the part of the City, to subject the City's estate and interest in Part Five and Improvements to any lien.

(f) Construct in Good and Workmanlike Manner

The Improvements shall be of first class quality, shall be constructed expeditiously in a good and workmanlike manner and otherwise in accordance with the provisions of this agreement and Eatons, through the Architect, shall properly supervise the work.

(g) Progress Certificates

The Review Authority may require Eatons to submit at reasonable intervals, at Eatons' expense, certificates of the Architect of the standing of the Improvements, the existence and extent of any faults or defects, the value of the work then done and to be done under any contract, the amount owing to any contractor and the amounts paid or retained by Eatons on any contract. Eatons shall also, upon the reasonable request of the Review Authority, furnish copies of certificates furnished to it by contractors or by the Architect in connection with the construction of the Improvements.

(h) By-Law Compliance

Eatons agrees to comply with all laws, by-laws and regulations in force from time to time during the currency of this agreement.

(i) Compliance with Insurance

Eatons agrees not to do or permit or suffer to be done on Part Five or any part or parts thereof anything which may render the policy or policies of insurance void or voidable or (except with the consent in writing of the City which consent may

not be unreasonably withheld) make any increased premium payable in respect of such policy.

(j) Repair

Eatons agrees to maintain the Improvements in good order and condition during their construction. If any imperfection shall appear in any part of the Improvements or any accident shall occur thereto, such imperfection or accident shall immediately be made good and repaired by Eatons provided that if Eatons shall;

- (i) within a reasonable time after notice from the Review Authority refuse or neglect to make good and repair any such imperfections or accidents, or
- (ii) cause or suffer or permit to be caused or suffered any damage or injury to the City's works, roads or services or to adjoining works, roads or services,

the City by its servants, contractors, agents and workmen may execute any necessary works and the cost thereof (as certified by the Review Authority) shall be paid to the City by Eatons within twenty-one days of a written demand in that behalf.

(k) Insurance Proceeds

In the event that the Improvements or any part thereof at any time during their construction are destroyed or damaged by fire or other risk covered by insurance and as often as the same may happen, Eatons covenants and agrees that all moneys payable by virtue of such insurance policy or policies shall forthwith be expended and applied in re-building, reinstating, repairing and completing the Improvements in a good and workmanlike manner and in accordance with this agreement, and in case the moneys received in respect of such insurance shall be insufficient for the purpose, Eatons shall make good any deficiency.

(1) Services and Utilities

Eatons shall permit access to any Parcel or Parcels to the City, Hamilton Hydro Electric System, United Gas Limited, The Bell Telephone Company of Canada and the operator of any central heating and cooling system for the purpose of executing any works required to construct, lay down, disconnect, alter, repair, clean or maintain any of such systems either serving or to serve the Improvements or running through any Parcel or Parcels. The City agrees to cooperate with Eatons in the provision of services during the construction of the Improvements on all of the Parcels. For the purpose of connecting the systems serving or to serve the Improvements or the Parcel or Parcels, Eatons agrees to coordinate the work to be performed by it hereunder with that to be performed by the operators of such systems. None of the cost of any such works serving and within the Parcels and the connection thereof with services at the periphery of the Parcels shall be borne by the City. Eatons further agrees to cooperate with the City so as to integrate and coordinate its Improvements on the Parcels with the structures and uses existing or proposed in the remainder of the Urban Renewal Area adjacent to the Improvements, so that its work and that of the others may proceed as expeditiously and efficiently as possible. Eatons agrees to design and construct the Improvements on any Parcel so as to accommodate the integration thereof with other Parcels with a minimum of cost and inconvenience.

(m) Minimization of Interference with Other Uses in Urban Renewal Area during Development

Eatons agrees to exercise its best efforts to construct the Improvements so as to cause a minimum of interference with the other uses in the Urban Renewal Area and with such uses as are continuing

employing during the course of construction first-class and prudent construction procedures. Eatons will use its best efforts to ensure the continuous use, with a minimum of disruption or interference because of dust, of the Hamilton Central Stall Holders Farmers' Market and the operation of the Market Ramp Garage. Subject to the foregoing, Eatons at its expense, may construct overhead pedestrian connections in an east-west direction over Parcel C between its existing 1958 addition and the Market Ramp Garage provided that the City has approved the location, manner of construction and appearance of such connections. Eatons shall forthwith make good any damage to the Market Ramp Garage caused by such connections, shall maintain, repair and reconstruct such connections as may be necessary at its expense and shall indemnify and save the City harmless from any damage arising from the construction, use, maintenance, repair or reconstruction of such connections. Eatons, at the request of the City by notice in writing shall remove such connections at Eatons' expense if its rights to purchase Parcels C and D have been terminated pursuant to the provisions hereof.

(n) Signs and Removal of Litter

Eatons agrees not to permit nor suffer to be done in or upon any Parcel or Parcels of which it has possession or any part thereof anything which may be or become a danger or nuisance or cause damage to any owners, tenants, or occupiers of adjacent lands and not to use nor to permit or suffer to be used any part of any Parcel or Parcels or Improvements or hoardings for advertising display purposes or for the display of any notices or signs except such as may be permitted in writing by the Review Authority and in particular not to use any Parcel or Parcels for any purpose whatsoever except the construction

of the Improvements as provided for herein. It further agrees forthwith to remove from any Parcel or Parcels and any adjoining lands over which it may have a temporary licence, all materials and rubbish, save for such materials as may be required for the construction of the Improvements and to keep the Parcel or Parcels at all times in an orderly and tidy fashion in keeping with good construction practice.

(o) Hoardings

Eatons shall erect and maintain in accordance with the by-laws of the City such hoardings as may be required during the course of excavation and construction of the Improvements.

(p) Indemnity

Provided that the City has fulfilled its obligations under this agreement, Eatons shall indemnify and keep indemnified the City from and against all legal liability in respect of loss, damage actions, suits, proceedings, claims, costs, demands, and expenses in any way arising out of the construction of the Improvements unless such liability arises through the negligence of an officer, employee or servant of the City while acting within the scope of his duties or employment.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.01: Central Heating

The City agrees to permit Eatons to participate in its negotiations with respect to the provision of a central heating system, recognizing that Eatons and others may wish to become users and also that easements and approvals will be required by the City and other governmental authorities.

Section 5.02: Assignments

Eatons shall not have the right to assign its rights hereunder without the prior written consent of the City which consent may be unreasonably withheld. Provided that Eatons shall have the right to transfer its interest in Parcels A or B after the completion of the Improvements thereon to a subsidiary or parent (provided that the net worth of such parent or subsidiary corporation is not less than the net worth of Eatons at the time of such transfer, such net worth to be established by a certificate similar to that provided for in Section 3.05 (b) hereof) corporation or corporations of Eatons, to a corporation or corporations under the same ownership as Eatons (provided that the net worth of such corporation or corporations under the same ownership is not less than the net worth of Eatons at the time of such transfer, such net worth to be established by a certificate similar to that provided for in Section 3.05 (b) hereof) or to a purchaser of substantially all of the assets of Eatons in Ontario but no such transfer shall in any way relieve or release Eatons from its obligations under this agreement and Eatons agrees to maintain an excess of current assets over current liabilities of more than ten million dollars, such excess to be established from time to time at the request of the City by a certificate of a firm of chartered accountants satisfactory to the City stating that they have examined the balance sheet of Eatons and established such excess provided that notwithstanding anything hereinbefore contained Eatons' department store shall not be used for any purpose other than a department store which shall be carried on under a name the dominant word in which shall be either "Eaton" or "Eatons" except in the event that this agreement is assigned to a purchaser of substantially all the assets of Eatons in Ontario, in which case the dominant word in such name shall be the dominant word in the principal retailing name of such purchaser.

Section 5.03: Bankruptcy, etc.

If Eatons shall make an assignment for the benefit of creditors, or assign in bankruptcy, or take the advantage in respect of its own affairs of any statute for the relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors; or if a receiving order is made against Eatons which remains unstayed for a period of thirty (30) days; or Eatons is adjudged bankrupt or insolvent; or if a liquidator or receiver of any property of Eatons is appointed by reason of any actual or alleged insolvency or any default of Eatons under any mortgage or other obligation and such appointment remains unstayed for a period of thirty (30) days; or if the interest of Eatons in Part Five or the Improvements is liable to be taken or sold under any writ or execution or other like process which shall remain undischarged for thirty (30) days, then the occurrence of any such contingency shall be deemed to be a breach of this agreement and, at the option of the City, this agreement may be terminated and Eatons shall quit and surrender Part Five and the Improvements to the City and shall, notwithstanding, remain liable for any loss or damage suffered by the City.

Section 5.04: Default

If the Improvements on Parcels A and B of Part Five which has been leased by the City to Eatons shall not be completed fit for use and occupation within the respective construction periods and not later than the latest date for completion of construction provided for in Section 3.04 hereof, or if Eatons shall not commence or proceed with the same with proper diligence, or in case Eatons shall in other ways substantially fail to perform and observe the stipulations and conditions on its part herein contained, or fail to remedy the breach of any of the said stipulations and conditions within such times as may be specifically provided for, or if no such times are provided for then within such time as may reasonably be required so

to do, thirty days after receipt of notice in writing to that effect to Eatons and the mortgagee as defined in Schedule C hereto, the City may, subject as hereinafter provided, re-enter the appropriate Parcel or Parcels of Part Five and any Improvements thereon and may hold and dispose thereof as if this agreement had not been entered into and without making Eatons any compensation or allowance for the same. This agreement shall thereupon determine without prejudice to any right of action or remedy of the City for the recovery of any right or moneys due to it from Eatons or in respect of any breach, non-observance or non-performance by Eatons of any agreements, conditions and stipulations herein contained, and the City shall be free to complete the Amended Renewal Scheme or dispose of any interest in the appropriate Parcel or Parcels of Part Five or the Improvements thereon in such manner as it may see fit. Eatons shall, at its expense, at the option of the City, restore the appropriate Parcel or Parcels of Part Five to the condition in which they were at the time of delivery of possession, filling any excavation and removing any Improvements as may be directed by the City. Provided that no re-entry, forfeiture or termination of this agreement by the City shall be valid as against a mortgagee of the leasehold interest of Part Five, approved in accordance with the form of ground lease annexed as Schedule C hereto and who has notified the City of its interest and address as hereinafter provided, unless the City shall first have given the mortgagee notice of the default or contingency entitling the City to re-enter, terminate or forfeit this agreement and of the City's intention to take such proceedings, and requiring the mortgagee to cure the default. The mortgagee shall thereafter have such time as may be reasonably necessary to cure the default, which shall include the time otherwise permitted to Eatons to cure such default. If the mortgagee, before forfeiture under this Section 5.04, or immediately after forfeiture under Section 5.03, makes any and all payments and does and performs all acts or things which may be necessary or required to prevent a forfeiture

of this agreement and tenders to the City an agreement executed by it in form and substance satisfactory to the City binding such mortgagee to carry on and complete the Improvements, such mortgagee shall thereupon be subrogated to all the rights of Eatons hereunder. The City agrees that if such an approved mortgagee notifies it that such mortgage has been executed, the City will send to such mortgagee at such address or addresses as it may from time to time specify, copies of all written notices or demands which it may send pursuant to this agreement or otherwise.

Section 5.05: Force Majeure

In addition to the provisions contained in paragraphs 3.03 and 3.04, if either the City or Eatons is delayed in the completion of any other action required to be taken by either of them respectively by reason of strike, lockout, war, rebellion, material or labour shortage due to national emergency, fire, flood, wind, water or other casualty or by any other matter not within their control and not caused by their default or act of commission or omission and not avoidable by reasonable effort or foresight, then the respective times for the completion of such actions shall be extended for a period or periods equal to the time lost due to such delays.

Section 5.06: Arbitration

If any dispute shall arise between the City and Eatons as to the reasonableness of the requirements with respect to insurance, or the amount of the proceeds thereof to which Eatons is entitled pursuant to this agreement, or any decision of the Review Authority or any other matter referable to arbitration pursuant to the terms of this agreement, any such dispute shall be decided by a single Arbitrator pursuant to the provisions of The Ontario Arbitrations Act, Chapter 18, Revised Statutes of Ontario, 1960, and amendments thereto or any re-enactment thereof and amendments thereto.

Section 5.07: Non-Waiver

No waiver by the City or Eatons of the breach of any covenant or provision of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenants or provisions. No waiver shall be effective unless the same is in writing.

Section 5.08: No Merging

Notwithstanding the entering into of the lease in the form annexed hereto, this agreement shall remain in full force and effect with respect to anything remaining to be performed or observed hereunder on the part of Eatons not provided for in the lease.

Section 5.09: Notice

Any notice in writing required or permitted to be given to Eatons hereunder shall be sufficiently given if delivered to an officer of Eatons personally or mailed by registered mail, postage prepaid, addressed to The Company Secretary, Head Office, The T. Eaton Company Limited, 190 Yonge Street, Toronto, Ontario. Any notice mailed as aforesaid shall be deemed to be given to Eatons on the second business day following the date of such mailing.

Any notice in writing required or permitted to be given to the City shall be sufficiently given if delivered to the City Clerk personally or mailed by registered mail, postage prepaid, addressed to The Corporation of the City of Hamilton, attention the City Clerk, City of Hamilton, City Hall, Hamilton, Ontario. Any such notice mailed as aforesaid shall be deemed to have been given to the City on the second business day following the date of such mailing.

Any party may at any time give notice to the other parties of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address of such party.

Section 5.10: Time of Essence

Time is of the essence of this agreement, save as herein otherwise specified.

Section 5.11: Amendments

This agreement may not be modified or amended except by an instrument in writing of equal formality herewith executed by the parties hereto or by their successors or assigns.

Section 5.12: Binding Effect

It is further agreed and declared that this agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns as limited in this agreement.

Section 5.13: Further Assurances

The parties hereto agree that each of them shall do or complete all such acts, matters and things as may be reasonably requisite on their respective parts to assist in the performance and in the fulfilment of all the terms and conditions hereof.

Section 5.14: Counterparts

This agreement may be executed in several counterparts each of which when executed by the parties shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

THE CORPORATION OF THE CITY OF HAMILTON

By _____
Mayor

City Clerk

THE T. EATON COMPANY LIMITED

By _____

GROUND LEASE FOR PHASE FIVE

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SCHEDULE

Schedule A - Description of demised premises

GROUND LEASE

THIS INDENTURE made as of the 1st day of December,
1970.

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT

B E T W E E N:

THE CORPORATION OF THE CITY OF HAMILTON

(hereinafter referred to as the "Lessor")

OF THE FIRST PART

- and -

THE T. EATON COMPANY LIMITED

(hereinafter referred to as the "Lessee")

OF THE SECOND PART

WITNESSETH:

WHEREAS pursuant to an agreement (herein defined and referred to as the "Development Agreement") the Lessor has agreed to lease to the Lessee certain lands referred to in the Development Agreement in order that the Lessee may proceed with the construction of Improvements on the demised premises as provided for in the Development Agreement and subject to compliance with the terms and conditions thereof, occupy and enjoy the Improvements and demised premises for the term of this lease in accordance with the terms and conditions of the Development Agreement and upon the terms and conditions and subject to the provisos herein contained.

NOW THEREFORE in consideration of the rents hereby reserved and the covenants herein contained on the part of the Lessee, the Lessor grants this lease to the Lessee on the terms hereof and in consideration of the demise and the covenants of the Lessor, the parties hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01: Defined Terms

For the purpose of this lease and of all indentures, leases, or other instruments supplemental hereto, which may confirm or amend this lease pursuant to its provisions, the following expressions shall have the meanings respectively hereinafter ascribed to them in this Section 1.01:

- (a) "Development Agreement" shall mean the agreement entered into between the Lessor, and the Lessee as of the 1st day of December, 1970 and to which the form of this lease was annexed as Schedule C;
- (b) "demised premises" shall mean the lands described in Schedule A hereto together with such other lands which may pursuant to the terms of the Development Agreement, from time to time hereafter be added to the land so described, together with any lands or interest in lands or easement or right in the nature of an easement which pursuant to Article XIV hereof or pursuant to amendments to the Development Agreement, from time to time may be added to the lands so described, less any lands or interest in lands or easement or right in the nature of an easement which may, pursuant to the said Article XIV, from time to time hereafter be excepted from the provisions of the lease;
- (c) the "first period of the term" shall mean the period beginning on the 1st day of December, 1970 and ending on the 31st day of October, 2015;
- (d) the "second period of the term" shall mean the twenty-year period beginning on the 1st day of November, 2015 and ending on the 31st day of October, 2035;
- (e) the "third period of the term" shall mean the twenty-year period beginning on the 1st day of November, 2035, and ending on the 31st day of October, 2055;
- (f) the "final period of the term" shall mean the fourteen-year period beginning on the 1st day of November, 2055

and ending on the 31st day of October, 2069;

- (g) "basic annual rent" as of any particular time shall mean the net basic annual rental provided for in this lease at the rate specified in Article III of this lease during any of the periods referred to in subsections (c), (d), (e) and (f) of this Section 1.01 exclusive of the other and additional payments to be made by the Lessee as hereinafter provided;
- (h) "lease" or "this lease" shall mean this indenture (including the Schedule) as originally executed and delivered, or if amended or supplemented, as so amended or supplemented inclusive of amendments or additions to the Development Agreement which by their terms affect this lease;
- (i) "mortgage" shall mean any first mortgage or mortgages by the Lessee of its interest in the demised premises and includes any deed of trust and mortgage securing bonds or debentures by such mortgage or mortgages and includes any other form of financing whereby the moneys advanced to the Lessee under such financing are secured by any form of transfer of the Lessee's interest in the demised premises;
- (j) "mortgagee" shall mean any mortgagee or mortgagees under a mortgage as above defined, and includes any trustee for bondholders under a deed of trust and mortgage securing bonds or debentures by a mortgage as herein defined and includes any other lender under any other form of financing whereby the moneys advanced to the Lessee under such financing are secured by any form of transfer of the Lessee's interest in the demised premises;
- (k) "net rentable area" shall mean all the area on each floor of each structure computed by measuring from the inner surfaces of the outer building walls of each such floor. No deductions shall be made for columns, projections or footing stones necessary to the building. Provided that no rental shall be payable with respect to areas below grade for mechanical rooms and facilities, loading ramps or

storage space other than merchandise stockrooms within the net rentable area.

The Lessor shall be provided by the Lessee with such information and drawings so as to enable it to inspect the Improvements for the purpose of checking the calculation of net rentable area determined on the aforesaid basis, and if the Lessor and Lessee disagree on such calculation it shall be subject to arbitration pursuant to Article XVII hereof;

(1) "Improvements" shall include the department store additions, parking facilities, if any, and other buildings, works, structures and facilities whether free standing or otherwise, ancillary thereto or connected therewith, all fixed plant machinery and equipment and including landscaping and interior and exterior decoration required to be constructed by the Lessee on the demised premises in accordance with the provisions of the Development Agreement;

(m) "Urban Renewal Area" shall mean the redevelopment area designated by By-law No. 10781 as amended by By-law No. 66-76 enacted by the Council of the City of Hamilton on the 29th day of June, 1965 and the 22nd day of February, 1966, respectively and such changes in such area as may be lawfully made from time to time.

Section 1.02: Interpretation

The captions and headings in this lease are inserted for convenience of reference only and do not define, limit or enlarge the scope, meaning or intent of any provision. This lease shall be interpreted and governed by the laws of the Province of Ontario. All of the provisions of this lease shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants or conditions were used in each separate provision hereof.

ARTICLE II

PURPOSE OF LEASE

Section 2.01: Purpose

The parties understand and agree that this lease is entered into for the purpose of implementing the provisions of the Development Agreement and its intent as set out in Section 2.01 thereof as they relate to the demised premises.

Section 2.02: Approvals

The parties acknowledge and agree that governmental approvals may be required with respect to this lease and the Lessor and the Lessee agree to cooperate in the obtaining of such approvals.

ARTICLE III

DEMISE, TERM, RENT AND RENEWAL

Section 3.01: Demise

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid observed and performed, the Lessor hereby demises and leases to the Lessee the demised premises.

Section 3.02: Term

To have and to hold the demised premises from the 1st day of December, 1970 and from thenceforth next ensuing and fully to be complete and ended on the 31st day of October, 2069 subject to the provisions hereof with respect to prior termination.

Section 3.03: Basic Annual Rent

Yielding and paying unto the Lessor, its successors and assigns, yearly and every year:

- (a) during the first period of the term a basic annual rent in equal monthly instalments in advance which shall be the greater of (i) that amount calculated by multiplying the number of square feet of the demised premises which have been leased to the Lessee pursuant to the provisions hereof by 48¢ or (ii) that amount calculated by multiplying the number of square feet of the demised premises which have been leased to the Lessee by 12¢ and adding thereto an amount calculated by multiplying the number of square feet of the net rentable area of Improvements built when the same are deemed to be completed for assessment purposes by 10¢; the said basic annual rent shall be recalculated as often as may be required until the completion of the Improvements in order to make the requisite proportionate monthly adjustments;
- (b) during the second period of the term a basic annual rent in equal monthly instalments in advance equal to the greater of
 - (i) the basic annual rent payable during the last year of the first period of the term, or
 - (ii) the ground rent value computed in accordance with Section 3.04 as of six months prior to the end of the first period of the term;
- (c) during the third period of the term a basic annual rent in equal monthly instalments in advance equal to the greater of
 - (i) the basic annual rent payable during the last year of the second period of the term, or
 - (ii) the ground rent value computed in accordance with Section 3.04 as of six months prior to the end of the second period of the term;
- (d) during the final period of the term a basic annual rent in equal monthly instalments in advance equal to the greater of

- (i) the basic annual rent payable during the last year of the third period of the term, or
- (ii) the ground rent value computed in accordance with Section 3.04 as of six months prior to the end of the third period of the term.

Subject to the provisions of this lease and in particular Section 6.05 hereof if the net rentable area of the Improvements is diminished in the event of damage or destruction either before or after the completion of the Improvements, the basic annual rent then applicable shall not abate or diminish;

Section 3.04: Determination of Ground Rent Value

Ground rent value for the purposes of Subsections (b), (c) and (d) of Section 3.03 shall mean the market rental of the demised premises determined as of the relevant date, having regard to the term then remaining, such determination to be based on the assumption that the demised premises are vacant lands, free from encumbrance and immediately available for new development and that they may be used for the greatest, highest and most valuable purpose then lawful. If the Lessor and Lessee shall not have agreed upon any of the said ground rent values within three months of any dates upon which they are required to be determined pursuant to Subsections (b), (c) and (d) of Section 3.03, then they shall be determined by arbitration as provided for by Article XVII hereof.

Section 3.05: Basic Annual Rent for Second, Third and Final Periods of Term

Once the basic annual rent has been determined for the second, third and final periods of the term, either by agreement or by arbitration, the Lessor and Lessee agree that they will execute an agreement confirming and recording such ground rent value as so determined and such agreement shall be supplemental to and shall form a part of this lease.

Section 3.06: Payments as Additional Rent

The Lessee covenants with the Lessor that it will pay unto the Lessor the rent reserved hereby in the manner hereinbefore mentioned without any deduction whatsoever and that the Lessee will in each and every year during the term pay as additional rent and discharge, within 30 days after the same shall become due and payable, all taxes, rates, duties, assessments, including local improvement rates and other charges that may be levied, rated, charged or assessed against the demised premises, the Improvements, and any other property of any nature whatsoever thereon or therein, and every tax and licence fee in respect of any and every business carried on thereon or therein in respect of the use or occupancy thereof by the Lessee (and any and every sub-lessee and licensee) whether such taxes, rates, duties, charges, assessments and licence fees are charged by any municipal, parliamentary, school or other body during the term, (but excluding such taxes as income or capital gain taxes or estate or inheritance or retail sales taxes imposed upon or with respect to the Lessor or any successor or assign of the Lessor) and all charges for electric current, water and other rates and all other charges for utilities or services in connection with such business or occupation, nonpayment of which would create a lien or charge against the demised premises or Improvements and will indemnify and keep indemnified the Lessor from and against payment of all loss, costs, charges and expenses occasioned by or arising from any and all such taxes, rates, duties, charges, assessment and licence fees; and any such liens, costs, charges and expenses suffered by the Lessor may be collected by the Lessor as rent with all rights of distress and otherwise as reserved to the Lessor in respect of all rent in arrears. The Lessee further covenants and agrees that upon the written request of the Lessor it will promptly make available for inspection receipts for payment of all taxes, rates, duties, assessments, including local improvement rates and other charges in respect of the demised premises

and the Improvements and all equipment and facilities thereon or therein which were due and payable up to one month prior to such request, and in any event will furnish to the Lessor, if requested by the Lessor, evidence of payments satisfactory to the Lessor before the 31st day of January in each year covering the payments for the preceding year. The Lessee shall have the right from time to time to appeal (in the name of the Lessor if the Lessee so elects) any assessment of the demised premises and Improvements or other charge or amount referred to in this Section 3.06 provided that in connection with any appeal of the assessment, the Lessee hereby waives in favour of the Lessor in its capacity as a municipal corporation, all rights during the first period of the term of this lease to use as a ground for such appeal the quantum of the basic annual rent. Notwithstanding the foregoing, nothing shall be deemed to prevent the Lessor in its capacity as a municipal corporation, from asserting a position contrary to that of the Lessee, with respect to the quantum of assessment of the demised premises and Improvements

Section 3.07: Changes in Area of Demised
Premises and Improvements

If the net rentable area of the Improvements is increased or pursuant to Article XIV hereof any additional land or interest in land or easement or right in the nature of an easement is added to the demised premises, the Lessee will in each and every year during the said term pay as additional rent and as and when the same shall become due and payable the amount or amounts of any rent agreed to be paid therefor and any other charge payable in respect thereof.

Section 3.08: Rent to be Net

All rent required to be paid by the Lessee hereunder shall be paid without any deduction, abatement or setoff whatsoever, it being the intention of this lease that all expenses,

costs, payments and outgoings incurred in respect of the demised premises and the Improvements shall (unless otherwise expressly stipulated herein to the contrary) be borne by the Lessee, that the rent herein provided shall be absolutely net to the Lessor and free of all abatement, setoff or deduction of realty taxes, charges, rates, assessments, expenses, costs, payments or outgoings of every nature arising from or related to the demised premises or any Improvements thereon and that, subject to the provisions of this lease, the Lessee, shall pay all such taxes, charges, rates, assessments, expenses, costs, payments and outgoings.

Section 3.09: Interest on Amounts in Arrears

When rent or any other amount payable hereunder by the Lessee to the Lessor shall be in arrears, such amount shall bear interest until paid at a rate equal to the then current interest rate being charged by life insurance companies, loan companies or other similar institutions authorized to make mortgage loans in the Province of Ontario for first mortgage loans on premises similar to the demised premises and the Lessor shall have all remedies for the collection of such interest if unpaid after demand as in the case of rent in arrears but this stipulation for interest shall not prejudice or affect any other remedies of the Lessor under this lease. Any sums, costs, expenses or other amounts from time to time due and payable by the Lessee to the Lessor under the provisions of this lease, including sums payable by way of indemnity, and whether expressed to be rent or not, may at the option of the Lessor be treated as and deemed to be rent, in which event the Lessor shall have all remedies for the collection of such sums, when in arrears, as are available to the Lessor for the collection of rent in arrears. Notwithstanding the foregoing, nothing shall be deemed to deprive the Lessor, in its capacity as a municipal corporation, of any of its rights with respect to the collection of taxes, or the rate of interest chargeable on arrears of taxes.

Section 3.10: Adjustment of Basic Annual Rent

In the event that the amount of basic annual rent at any time payable hereunder is subject to a revision which is dependent upon a computation or determination to be made pursuant to any provision of this Article III but which has not yet been made and if consequently the amount of the revision of rent cannot yet be ascertained, the Lessee shall, pending the making of the computation or determination, continue to pay basic annual rent by monthly instalments equal to the monthly instalments payable in the period immediately preceding the date from which such revision of basic annual rent is to be computed or determined and when the revised basic annual rent has been ascertained the Lessee shall pay to the Lessor the amount by which the revised basic annual rent, as computed or determined, exceeds the amount actually paid during the period between the date for revision and the computation or determination or the Lessor shall pay to the Lessee the amount by which the revised basic annual rent as computed or determined falls short of the amount actually paid during the period between the date for revision and the computation or determination. No interest shall be payable by the Lessee or Lessor as the case may be on the amount so paid to the Lessor or the Lessee as the case may be if it is paid within ten days of its computation or determination. Any dispute with respect to such computation or determination shall be determined by arbitration as provided for in Article XVII hereof.

Section 3.11: Negotiation for New Lease

During the period from November 1st, 2010 to October 31st, 2060, the Lessor and Lessee agree that if in their joint opinion the Improvements have become obsolete, the Lessee shall have the right during the said period to negotiate with the Lessor for a new lease upon such terms as may be mutually agreed provided that the Lessee undertakes to erect new improvements, satisfactory to the Lessor, on the demised premises.

ARTICLE IV
IMPROVEMENTS

Section 4.01: Completion of Improvements

As part of the consideration for this lease the Lessee agrees to complete all of the Improvements on the demised premises in accordance with the provisions of the Development Agreement. If the Lessee shall default in the commencement or completion of all of the Improvements to be constructed on the firstly described part of the demised premises in accordance with the provisions of the Development Agreement, the Lessor may at its option terminate this lease subject to the provisions of Article XV hereof. If the Lessee has completed the Improvements to be constructed on the firstly described part of the demised premises but shall default in the commencement or completion of all of the Improvements to be constructed on the secondly described part of the demised premises in accordance with the provisions of the Development Agreement, the Lessor may at its option, terminate the lease of the secondly described part of the demised premises subject to Article XV hereof provided that notwithstanding anything herein contained if all of the Improvements to be constructed on both the firstly and secondly described parts of the demised premises have been certified to have been completed under Section 4.05(b) of the Development Agreement, the Development Agreement shall have no further force or effect with respect to this lease.

Section 4.02: Use and Ownership of Improvements

The Lessor covenants with the Lessee for quiet enjoyment and to observe and perform all the covenants and provisos of this lease on the part of the Lessor to be observed and performed. The Lessor and the Lessee agree that the title to and ownership of the Improvements and all alterations, additions, changes and substitutions thereto shall at all times during the term hereby granted be vested in the Lessee notwithstanding any

rule of law as to immediate vesting of the title to and ownership of the Improvements in the Lessor as owner of the freehold of the demised premises. The title to and the ownership of the Improvements shall not pass to and become vested in the Lessor until the termination of this lease, either by passage of time or other termination and subject to Article XV hereof, upon such termination the Improvements shall become the absolute property of the Lessor, free of all encumbrance provided that the Lessor's absolute right of property in the Improvements which will arise upon the termination of this lease shall take priority over any other interest in the Improvements which may now or hereafter be created by the Lessee and that all dealings by the Lessee with the Improvements which in any way affect the title thereof shall be made expressly subject to this right of the Lessor and the Lessee shall not assign, encumber, or otherwise deal with the Improvements separately from any permitted dealing with the leasehold interest under this lease to the intent that no person shall hold or enjoy any interest in this lease acquired from the Lessee who does not at the same time hold a like interest in the Improvements. If the Lessee is not in default on termination, the Lessor and Lessee shall negotiate in good faith for the most mutually desirable disposition or use of the demised premises and Improvements and in the event that the Lessor proposes to sell the demised premises and Improvements on such termination, the Lessee shall have the first right to purchase the same from the Lessor at their then market value.

Section 4.03: Ownership of Tenant's Fixtures

The provisions of Section 4.02 shall not be construed to prevent the Lessee from conferring on tenants, concessionaires or occupants of parts of the Improvements the right of property in or the right to remove fixtures or improvements which are of the nature of usual tenant's fixtures or improvements and normally removable by them and which are not part of the structure or any essential part of the Improvements. The Lessee shall

make good or shall cause such tenants to make good any damage to the Improvements caused by the removal of any tenant's fixtures or improvements.

Section 4.04: Removal of Tenant's Fixtures

If the Lessee is not in default hereunder, the Lessee may at, or immediately before the termination of this lease, either by passage of time or other termination, remove its furniture, chattels and usual tenant's fixtures or improvements not forming any part of the structure or an essential part of the Improvements and the Lessee may from time to time remove such tenants's furniture, chattels, fixtures or improvements in the ordinary course of its business or in the event of any reconstruction, changes or alterations of the Improvements pursuant to the provisions hereof.

Section 4.05: Use of Demised Premises

The Lessee covenants and agrees that (unless with the approval in writing of the Lessor, which approval shall not be unreasonably withheld) neither the demised premises nor the Improvements shall be used for any purpose or purposes whatsoever except as a first class department store, in accordance with the best merchandising practices and standards and in any event to standards not lower than the then current standards of the Lessee at its other stores in similar markets and that no part of the demised premises or Improvements shall be used at any time for any purpose or in such manner which would be a nuisance. The Lessee also agrees at all times during the term of this lease to operate, maintain, repair and replace the Improvements on the demised premises and its own pedestrian and vehicular access thereto so as to complement and achieve the best possible integration of their use, access and function with the other uses in the Urban Renewal Area and the immediately surrounding area.

Section 4.06: Insurance

In addition to the requirements as to insurance

contained in the Development Agreement the Lessee covenants and agrees with the Lessor as follows:

- (a) At all times during the term of this lease the Lessee at its own cost and expense shall effect and keep in force insurance protecting both the Lessor and the Lessee (without any rights of cross claim or subrogation against the Lessor) against claims for personal injury, death, property damage, or third party or public liability claims arising from any accident or occurrence upon or in the demised premises and the Improvements thereon, from any cause to an amount of not less than \$2,000,000 (or from time to time such greater amounts as shall be sufficient having regard to any reduction in the real value of the Canadian dollar as determined by the Lessor acting reasonably to afford equivalent protection) for personal injury, death, property, or other claims in respect of any one accident or occurrence;
- (b) The Lessee, at its own cost and expense, shall effect and keep in force during the term of this lease, pressure vessel insurance protecting both the Lessor and the Lessee in respect of such pressure vessels as the Lessor may from time to time reasonably deem necessary to insure in such amount in respect of such risks as are normally covered by prudent owners of similar properties in Ontario (which coverage shall include loss or damage caused by rupture of steam pipes);
- (c) At all times during the term of this lease the Lessee shall at its own cost and expense insure and keep insured or cause to be insured and kept insured the Improvements in accordance with policy terms and conditions in any one or more companies approved by the Lessor (such approval not to be unreasonably withheld) in a sum, at the Lessee's option of not less than 80% (without any co-insurance provision) or 100% (with a 90% co-insurance provision) of the full replacement value of the Improvements (excluding

the replacement value of foundations and architectural fees relating to such foundations) upon the demised premises protecting the Lessor, the Lessee and any mortgagee (without any rights of cross claim or subrogation against the Lessor) from any loss or damage caused by:

- (i) fire or such other perils as may from time to time be included in the standard fire insurance additional perils supplementary contract generally available in Ontario;
- (ii) risks normally insured against in Ontario for buildings and improvements of construction, location and uses similar to the Improvements

Provided that if there is a 90% co-insurance provision as aforesaid such a policy shall require the insurer or insurers at all times to ensure that the actual full replacement value is insured against so as to prevent the Lessor or the Lessee from becoming a co-insurer under the terms of such policy or policies and to permit full recovery in the event of loss;

For the purposes of this subsection replacement value shall be determined on such basis as may be agreed upon.

If the parties are unable to agree as to what constitutes a proper basis for the purpose of the foregoing provisions of this subsection the question shall be determined by arbitration as provided for in Article XVII hereof;

- (d) Any and all policies of insurance referred to herein shall be written in the name of the Lessee as the insured with loss, subject to the provisions of Section 4.06(g) hereof, payable to the Lessor, the Lessee and any mortgagee as their respective interests may appear, and shall contain a subrogation clause to the effect that any release from liability entered into by the insured, prior to any loss, shall not affect the right of the insured or the Lessor or any mortgagee to recover;

- (e) The Lessee hereby releases the Lessor, its successors and assigns, from any and all liability for loss or damage caused by any of the perils against which the Lessee shall have insured or pursuant to the terms of this lease is obligated to insure the Improvements or any part thereof, and whether or not such loss or damage may have arisen out of the negligence of the Lessor, and the Lessee hereby covenants to indemnify and save harmless (to the limits to which it is required to insure under this lease) the Lessor from and against all manner of actions, causes of action, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to such loss or damage;
- (f) It is the intention of the parties hereto and they hereby agree that the proceeds of any policies of insurance referred to in Section 4.06(b) and Section 4.06(c) hereof shall be payable as follows:
- (i) Where such insurance proceeds are less than \$100,000 they shall be payable to the Lessee who shall forthwith expend and apply then in rebuilding, reinstating and repairing the Improvements as required by the provisions of this lease and in case such proceeds shall be insufficient for the purpose, the Lessee will make good any deficiency;
 - (ii) Where such insurance proceeds are payable in an amount in excess of \$100,000 but not exceeding \$200,000 they shall be paid to the Lessor or, at the option of the Lessee, to the Lessor and any mortgagee jointly, and the cost of rebuilding, reinstating and repairing the Improvements as required by the terms of this lease shall be borne by the Lessee; payment for the work shall be made to the Lessee in a lump sum on completion of the said rebuilding, reinstating and repairing; subject to subclauses (iii) and (iv) hereof any interest accrued on such proceeds shall be added to such lump sum at the time of its payment to the Lessee;

- (iii) Should the Lessee fail to effect such rebuilding, reinstating and repairing in accordance with the provisions of this lease within a reasonable time, the Lessor shall be entitled to effect the same itself, retain any insurance moneys against the cost, and recover any balance from the Lessee; any surplus insurance moneys remaining after payment for such work shall be paid to the Lessee if it is not then in default under this lease;
- (iv) When at the time of the occurrence of the damage or the completion of such rebuilding, reinstating and repairing the Lessee is in default to the Lessor under the terms of this lease but the Lessor has not elected to terminate the lease, the Lessor shall be entitled, out of any insurance moneys in its hands, or in the hands of the Lessor and mortgagee jointly, to retain any moneys not paid over for the cost of such work against the rectification of the Lessee's default;
- (v) Where such insurance proceeds exceed \$200,000 they shall be paid to a Canadian chartered bank or to a trust or loan company authorized to carry on business in the Province of Ontario, designated from time to time by the Lessee and mortgagee jointly, to the joint account of the Lessor, the Lessee and any mortgagee. Work in process shall be paid for in instalments as progress payments out of the insurance proceeds. At all times there shall be retained in such account sufficient of the insurance proceeds to pay for the estimated cost of repair outstanding at the date any progress payment is made. Before any contract is entered into by the Lessor, Lessee or mortgagee for the carrying out of any repair work pursuant to this section, copies of the estimates for any work and the contracts for the completion of the work shall be submitted to such of the Lessor, Lessee and mortgagee as shall not be parties to such contracts.

Any progress payments to be made under this clause to the Lessor, Lessee or mortgagee, shall not be made without the submission of a statement, certified by the architect of the party to whom the payments are to be made, stating the estimated amount required to complete the work of repair at the date of the certificate, the amount claimed by individual contractors at that date, the amount of any payments made at that date for work already done, and verifying the standard and quality of the work already done. In making any payment from such account under this clause regard shall be had to mechanics' lien legislation applicable in the Province of Ontario and there shall be retained in such account for the period specified in such legislation the amount of any hold-back required. In case of dispute over the outstanding cost or the filing of liens on the Improvements or demised premises arising out of the work of repair, there shall be no obligation to make or authorize any progress or lump sum payment until the dispute is settled or the lien discharged, as the primary duty of repair falls on the Lessee. Should this lease be terminated, for whatever cause, pursuant to the terms hereof, all moneys remaining in the said account shall be payable to the Lessor, Lessee and any mortgagee as their respective interests may appear. Should the repairs be completed and should after the hold-back period there remain moneys in the said account, inclusive of interest on such moneys, if any, any such sums shall be paid to the Lessee if it is not then in default under this lease.

In case of any dispute as to the terms of this clause (g) of Section 4.06, such dispute shall be the subject of arbitration in accordance with Article XVII hereof.

- (g) The Lessee shall pay all premiums and costs of all insurance required to be effected by the Lessee under any provision of this lease and shall from time to time keep on file with the Lessor certificates sufficient to show and establish accurately, at all times, the current status of policies in force, and in particular shall submit to the Lessor before the expiration of every current policy, evidence of the renewal of such policy or the issuance of a replacement policy and of the payment of all premiums due for such renewal or replacement, and shall within seventy-two hours notify the Lessor of any cancellation or intended cancellation by any insurer of any policy or any circumstances known to the Lessee materially affecting its coverage. The Lessee shall not cancel any policy of insurance without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Each policy shall provide that no cancellation shall be effective without thirty days' prior notice by the insurer to the Lessor.
- (h) If the Lessee shall be in default with respect to any of its obligations under this lease regarding insurance, including the obligation to submit proof of insurance to the Lessor, the Lessor may, but shall not be obliged to, place any insurance at the cost and expense of the Lessee or pay any arrears of premium, and any expense incurred by the Lessor shall be reimbursed to it by the Lessee on demand, and if unpaid after demand, the Lessor shall have all remedies for the collection thereof as in the case of rent in arrears.
- (i) Nothing in this section shall require the Lessee to duplicate any insurance policies or bonds required by the Development Agreement so long as the same are required to be kept in force under the provisions of the Development Agreement.

ARTICLE V

SALE OF DEMISED PREMISES

Section 5.01: Right of First Refusal

Should the Lessor decide to sell the demised premises and receives a bona fide offer acceptable to it from some one other than the Lessee, the Lessor shall present such offer to the Lessee who may within sixty days (60) by notice in writing agree to purchase the demised premises on substantially the same terms and conditions as are contained in such offer.

ARTICLE VI

USE AND MAINTENANCE OF DEMISED PREMISES

Section 6.01: Services

Except as provided in the Development Agreement, the Lessor shall not be obliged to furnish any services or facilities or make any repairs or alterations to the demised premises or the Improvements, the Lessee hereby assuming full and sole responsibility for the condition, operation, repair, replacement, relocation, maintenance and management of the demised premises and the Improvements.

Section 6.02: Operation

The Lessee shall operate, manage and maintain the Improvements as a first class department store, in accordance with the best merchandising practices and standards and in any event to standards not lower than the then current standards of the Lessee at its other stores in similar markets and (in addition to performing all its other covenants under this lease) shall properly and adequately supervise the Improvements, shall supply heat, air-conditioning and other necessary building services to tenants and occupants whenever reasonably required, shall keep the Improvements and the demised premises neat and clean, shall impose and enforce regulations relating to the

use and occupancy of space in the Improvements consistent with a high quality development, shall maintain the general appearance and standard of the Improvements and shall generally manage the Improvements as would a prudent owner.

Section 6.03: Repairs

The Lessee at its own cost and expense shall during the entire term, put and keep in good order and condition or shall cause to be put and kept in good order and condition the demised premises and the Improvements and the appurtenances and equipment thereof, both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, elevators, escalators and similar devices, heating and air conditioning equipment, sidewalks, yards and other like areas, water and sewer mains and connections, water, steam, gas and electric pipes and conduits, and all other fixtures in and appurtenances to the demised premises and the Improvements and the machinery and equipment used and required in the operation thereof, whether or not enumerated herein, and shall, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacements, alterations, additions, changes, substitutions and improvements, ordinary or extraordinary, structural or otherwise, and keep the Improvements and aforesaid appurtenances and equipment fully usable for all the purposes for which the Improvements were erected and constructed and the aforesaid appurtenances and equipment were supplied and installed. Such repairs shall be in all respects to a standard at least equal in quality of material and workmanship to the original work and material in the Improvements or to any more modern standard as may then be prevailing at least equal, under the circumstances, to the quality of the original work and material and shall meet the requirements of municipal or governmental authorities and the fire insurance underwriters. The Lessee shall not commit or suffer to be committed any waste or injury to the demised premises or the Improvements or any part thereof

or use any of the same for any illegal or unlawful purpose or in any manner which will result in the cancellation of any insurance or in the refusal of any insurer to issue any insurance as requested. The Lessee shall at all times at its own expense except to the extent that it may be relieved therefrom by municipal by-laws or regulations, keep the sidewalks, curbs, area ways, plazas, concourse and service levels and rights-of-way forming part of the demised premises in good condition and repair and reasonably clean from rubbish, ice and snow and shall not physically encumber or obstruct the same or allow the same to be physically encumbered or obstructed in any manner except for the reasonable requirements of deliveries, construction, repair and reconstruction as related to the demised premises and except as permitted by the Development Agreement. The Lessee shall maintain all landscaped areas, pools, fountains and other components within the demised premises, in good order and condition. The Lessee shall not injure or disfigure the demised premises or the Improvements or permit, to the extent which is within its reasonable power, the same to be injured or disfigured in any way. At the expiration or other termination of this lease, the Lessee shall, except as otherwise expressly provided herein, surrender and deliver up the demised premises with the Improvements, and the aforesaid appurtenances and equipment thereof, or any replacements thereof or substitutions therefor, in good order and condition. The Lessee accepts the demised premises in such condition as they may be at the time of delivery, knowing the condition thereof, and agreeing that the Lessor has made no representation, warranty or agreement with respect thereto except as provided in the Development Agreement.

Section 6.04: Changes and Alterations

The Lessee shall not make or permit to be made any repairs, replacements, alterations, additions, changes, substitutions or improvements (hereinafter collectively referred to as the "alterations") affecting the net rentable area of

the Improvements, areas open to the public, the external appearance of the Improvements or the operations of the mechanical systems in or connected with the Improvements, which would change their nature, area or appearance as originally constructed without first obtaining the written approval of the Lessor thereto, which the Lessor agrees not to unreasonably withhold provided that the Lessee is not in default hereunder and that such changes and alterations are in reasonable conformity with Improvements as originally constructed or as permitted to be changed by Section 4.05 hereof. Before requesting the Lessor's approval, the Lessee shall submit or cause to be submitted in duplicate to the Lessor detailed drawings, elevations (where applicable), specifications (including materials to be used), location (where applicable) and cost estimates of such proposed alterations, one of which copies may be retained by the Lessor. Such alterations shall meet the requirements of all municipal, provincial, federal and other governmental or other authorities, of the fire insurance underwriters and of the mortgagee, if any. All such alterations if estimated by the Lessee to be in excess of \$100,000 in cost shall be by written contract or contracts and the Lessee agrees, if and when requested by the Lessor, to produce to the Lessor an executed copy of such contract or contracts. In the event that any such contract is for an amount in excess of \$250,000, the Lessee agrees that during the course of alterations the Lessee will upon request, from the Lessor from time to time, deliver to the Lessor a certificate of a firm of chartered accountants satisfactory to the Lessor that they have examined the balance sheet of the Lessee upon receipt of such request from the Lessor and that such balance sheet discloses an excess of current assets over current liabilities of more than ten million dollars, the Lessee's continuing financial ability to complete the alterations and its long term financing arrangements as related to the alterations. Without limiting the generality of the foregoing, the Lessee shall forward to the Lessor satisfactory evidence of the progress payments to its construction or building

company together with the billings therefor and evidence of the payment of the final billing.

Both before and after the commencement of the alterations, the Lessor shall have the right to participate in the formulation of any financial plan whenever such plan requires alterations to be made to this lease. The said contract shall provide

- (a) for the completion of such alterations according to the terms and provisions set out in this Section 6.04 within a reasonable period (excluding delays caused by strike, lockout, war, rebellion, material or labour shortage due to national emergency, fire, flood, wind, water, or other casualty or by any other matter not within the contractor's control and not caused by the contractor's default or act of commission or omission and not avoidable by exercise of reasonable effort or foresight), in a good and workmanlike manner, in accordance with the approved plans, drawings, revisions (where applicable), specifications (including materials to be used), location (where applicable) and cost estimates certified and verified as aforesaid and in accordance with all requirements of the law, and
- (b) for payment and discharge of any mechanics' or building liens which may be filed in connection therewith, up to the date of the actual completion of such alterations, as certified by the architect in charge of the same and up to and including the last day for filing claims for mechanics' liens.

The Lessee covenants and agrees that any alterations or other additional work once begun shall be prosecuted with reasonable diligence to completion free and clear of any and all mechanics' liens or other liens, conditional sale contracts, chattel mortgages or similar claims or encumbrances against the demised premises, the Improvements, the Lessor or any mortgagee, and performed in all respects in accordance with the law.

Section 6.05: Damage or Destruction

- (a) Subject as hereinafter provided the partial destruction or damage or complete destruction by fire or other casualty of the Improvements shall not terminate this lease or entitle the Lessee to surrender possession of the demised premises or to demand any abatement or reduction of the rent or additional rent or other charges payable under this lease, any law or statute now or in the future to the contrary notwithstanding.
- (b) In the case of damage to, or total or partial destruction of the Improvements or any part thereof, the Lessee shall give the Lessor prompt notice thereof, and shall promptly proceed, at its own cost and expense, to restore the Improvements so damaged to the same condition as prevailed immediately prior to the occurrence of such damage in accordance with Sections 6.03 and 6.04 hereof where applicable. The Lessee shall furnish the Lessor with a written estimate of an architect qualified to practice in the Province of Ontario, selected by the Lessee and approved by the Lessor, (which approval shall not be unreasonably withheld) of the cost fully to repair such damage or destruction. The proceeds of all policies of insurance referred to in Sections 4.06(b) and 4.06(c) in respect of such damage or destruction shall be used for the purpose of the repair and/or restoration of the demised premises and Improvements in accordance with the provisions of Section 4.06(f) hereof.
- (c) If the Improvements shall be destroyed or damaged and in the opinion of the Lessee's architect as certified to the Lessor either the estimated cost of repairing such destruction or damage exceeds four times the basic annual rent payable hereunder in the 86th lease year, or the time reasonably anticipated as being necessary for the repair with due diligence of such destruction or damage exceeds six months, and if such destruction or damage shall have occurred after the expiration of the 86th lease year, and if the Lessee shall be entitled to terminate

and shall terminate all existing leases and agreements for leases with lessees and occupants of the demised premises and the Improvements, and shall not be in default under this lease, the Lessee shall have the option by written notice given to the Lessor within 90 days after the occurrence of such destruction or damage to terminate this lease, such termination to take effect 60 days after the exercise of the option. On such termination, notwithstanding anything contained in this lease, any law or statute to the contrary, all proceeds of insurance or other moneys payable in respect of such destruction or damage shall be used to pay and fully satisfy to and including the date of payment, in accordance with the following priorities, the following:

Firstly, any arrears of taxes levied with respect to the demised premises and the Improvements,

Secondly, any unpaid principal, interest and other outstanding obligations of any mortgage, the said unpaid principal, interest and other outstanding obligations to be calculated and paid to and including the date of payment (the rights of the mortgagee to such moneys to be, and to be deemed to be, those existing immediately prior to the exercise of the said option), and

Thirdly, the cost of demolition of the Improvements and/or restoration of the demised premises to the condition of vacant lands so as to permit new construction.

The balance, if any, of such moneys remaining after payment and full satisfaction as aforesaid, shall be divided between the Lessor and the Lessee as their respective interests therein may appear (such interests to be, and to be deemed to be, those existing immediately prior to the exercise of the said option) in such proportions as may be agreed, having regard, inter alia, to the Lessee's loss of future profits, to the then present value of the basic annual rents payable hereunder, to the then present value of the municipal taxes on the demised premises and Improvements being received by the Lessor in its capacity

as a municipal corporation immediately prior to such damage or destruction if the Lessor at that time is still a municipal corporation and to the Lessor's right to the Improvements at the end of the term had such destruction or damage not occurred. In default of agreement, the division of such moneys shall be determined by arbitration as hereinafter provided. In the event of termination of this lease as aforesaid, rent and all other charges affecting the demised premises shall be paid and adjusted to the date of termination.

- (d) Should the Improvements or any major component thereof be destroyed or damaged totally or to such an extent as to render 85% or more of the area thereof unusable and should the Improvements or any major component thereof be so destroyed or damaged as to render the portion in question incapable of being rebuilt and/or repaired and restored with reasonable diligence within twenty-four months of the happening of such destruction or damage (as certified by the Lessee's architect) and if the Lessee shall be prevented for a period of 12 months from starting to rebuild, repair or restore the same for any of the reasons set out in Section 9.01 hereof, then the Lessee may at its option by notice in writing to be given to the Lessor and to the Mortgagee, if any, within 15 months after the date of the destruction or damage (which notice shall specify the cause which prevented commencing the rebuilding, repairing or restoring of the portion in question, the reasonableness of such cause to be subject to arbitration in accordance with Article XVII) terminate this lease wholly or in respect of the destroyed or damaged major component, such termination to take effect 60 days after the exercise of the option provided that the Lessee shall be entitled to terminate and shall terminate all existing leases and agreements for leases with lessees and occupants of the demised premises and the Improvements and shall not be in default under this lease. On such termination, notwithstanding

anything contained in this lease, any law or statute to the contrary, all proceeds of insurance or other moneys payable in respect of such destruction or damage shall be used to pay and fully satisfy to and including the date of payment, in accordance with the following priorities, the following:

Firstly, any arrears of taxes levied in respect of the portion in question,

Secondly, any unpaid principal, interest and other outstanding obligations of any mortgage, the said unpaid principal, interest and other outstanding obligations to be calculated and paid to and including the date of payment (the rights of the mortgagee to such moneys to be, and to be deemed to be, those existing immediately prior to the exercise of the said option), and

Thirdly, the cost of demolition of the Improvements or damaged major component, as the case may be, and/or restoration of the relevant portion of the demised premises to the condition of vacant lands so as to permit new construction.

The balance, if any, of such moneys, remaining after payment and full satisfaction as aforesaid, shall be divided between the Lessor and the Lessee as their respective interests therein may appear (such interests to be, and to be deemed to be, those existing immediately prior to the Lessee giving such notice) in such proportions as may be agreed, having regard, inter alia, to the Lessee's loss of future profits with respect to the portion in question, to the then present value of the rents payable hereunder with respect to the portion in question, to the then present value of the municipal taxes being received by the Lessor in its capacity as a municipal corporation with respect to the portion in question immediately prior to such destruction or damage if the Lessor at that time

is still a municipal corporation and to the Lessor's right to the portion in question at the end of the term had such destruction or damage not occurred. In default of agreement the division of such moneys shall be determined by arbitration in accordance with the provisions of Article XVII. In addition to the foregoing the Lessee shall pay to the Lessor the basic annual rent with respect to the portion in question for a period of three years after the date of the destruction or damage, which payment shall not be taken into account in making the foregoing determination.

In the event that such destruction or damage is of a major component of the Improvements as aforesaid, the rent payable under this lease shall be adjusted by the parties and failing agreement thereon by arbitration in accordance with Article XVII.

Section 6.06: Mechanics' Liens

The Lessee shall throughout the said term at its own cost and expense cause any and all mechanics' liens and other liens for labour, services or materials alleged to have been furnished or to have been charged by or for the Lessee or any one on its behalf at the demised premises or the Improvements, which may be registered against or otherwise affect the demised premises or the Improvements, to be paid, satisfied, released, cancelled and vacated within 30 days after the Lessor shall send to the Lessee written notice by registered mail of any claim for any such lien. Provided, however, that in the event of a bona fide dispute by the Lessee of the validity or correctness of any claim for any such lien the Lessee shall not be bound by the foregoing but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into court the amount claimed and such costs as the court may direct and registering all such documents as may be necessary to discharge such lien, or providing such other

security in respect of such claim as will result in the discharge of such lien, provided always that neither the demised premises nor the Improvements thereon shall thereby become liable to forfeiture or sale. The Lessor may, but shall not be obliged to, after expiration of thirty days after the Lessee has received notice as aforesaid, discharge any lien filed or registered if in the Lessor's judgment, the demised premises or the Improvements or any part thereof or the Lessee's interest therein becomes liable to any forfeiture or sale or is otherwise in jeopardy and any amount paid by the Lessor in so doing, together with all reasonable costs and expenses of the Lessor shall be reimbursed to the Lessor by the Lessee on demand together with interest at the rate set out in Section 3.09 hereof from the date incurred until paid and may be recovered as rent in arrears. Nothing herein contained shall authorize the Lessee, or imply any consent or agreement on the part of the Lessor, to subject the Lessor's estate and interest in the demised premises and Improvements to any lien.

Section 6.07: Compliance with Governmental and other Regulations

The Lessee covenants that it will comply with all provisions of law including, without limitation, federal and provincial legislative enactments, municipal zoning and building by-laws and any other government or municipal regulations which relate to the demised premises or the Improvements or to the operation and use of the Improvements and the making of any repairs, replacements, alterations, additions, changes, substitutions, or improvements of or to the Improvements or any part thereof. The Lessee covenants to comply with all police, fire and sanitary regulations imposed by any federal, provincial or municipal authorities or made by fire insurance underwriters, and to observe and obey all governmental and municipal laws, by-laws, regulations and other lawful requirements governing the conduct of any business conducted on the demised premises or in the Improvements.

Section 6.08: Maintenance and Repair of Common Areas

The Lessee shall have the right, at its expense, to construct overhead pedestrian connections in an east-west direction between its existing 1958 addition and the Market Ramp Garage, provided that the Lessor has approved the location, manner of construction and appearance of such connections. The Lessee shall forthwith make good any damage to the Market Ramp Garage caused by such connections, shall maintain, repair and reconstruct such connections as may be necessary at its expense and shall indemnify and save the Lessor harmless from any damage arising from the construction, use maintenance, repair or reconstruction of such connections provided that the Lessee at its own expense shall remove such connections at the request of the Lessor by notice in writing if it is in default with respect to Parcel C pursuant to the terms of the Development Agreement.

The Lessee agrees to pay such proportion as may be agreed to by the Lessor and the Lessee of expenses relating to repairing, cleaning, maintaining and reconstructing any Improvements, areas or services, external to the demised premises but contained within the area bounded on the north by the south limit of Merrick Street, on the east by the west limit of James Street North, on the south by the south limit of the demised premises and on the west by the west limit of the demised premises and its extension northerly to the south limit of Merrick Street the use of which is common to the demised premises and any abutting property. Notwithstanding the foregoing, should the Lessee with the Lessor's consent construct sidewalks or other improvements (including overpasses) external to and contiguous with the demised premises, the Lessee shall pay all expenses relating to the repairing, cleaning, maintaining and reconstructing any such sidewalks or other improvements.

Section 6.09: Signs

The Lessee agrees not to exhibit on the demised premises or the Improvements any sign or signs intended by the Lessee to be visible from the exterior of the Improvements not approved by the Lessor, such signs to be integrated with the overall design of the Urban Renewal Area and shall not adversely affect its aesthetic qualities, the design, placing and number of such signs to be subject to the approval of the Lessor. Any approval required under this Section 6.09 shall not be unreasonably withheld.

Section 6.10: Non-Discrimination

The Lessee agrees that it will not discriminate in its employment practices at any time during the period of this lease or in the use of leasing or occupancy of any portion of the demised premises or the Improvements by reason of race, colour, religion or national origin.

Section 6.11: Workmen's Compensation

At all times during the said term, the Lessee shall at its own expense procure and carry or cause to be procured and carried and paid for full Workmen's Compensation coverage in respect of all workmen, employees, servants and others engaged, by or on behalf of the Lessee in or upon any work, non-payment of which could create a lien on the demised premises or the Improvements.

ARTICLE VII

EXPROPRIATION

Section 7.01: Rights on Expropriation

In the event of the expropriation of the whole or any part of the demised premises or the Improvements or any interest therein during the first period of the term, the Lessee

shall not be entitled to any compensation by reason of the fact that the basic annual rent may then be lower than the current market ground rent value at the date of the expropriation, provided that this shall not preclude the entitlement of the Lessee to other compensation. In the event of the expropriation of a part of the demised premises or the Improvements, this lease shall not terminate but the basic annual rent reserved hereunder will abate to the extent that such expropriation has reduced the value to the Lessee of the demised premises or the Improvements remaining. In default of agreement as to any such abatement it shall be settled by arbitration as provided for in Article XVII. If as a result of any partial expropriation of the demised premises or the Improvements it becomes necessary to reconstruct or alter so much of the Improvements as remain unexpropriated in order that the remaining portions thereof may be used and operated practicably and economically, without limiting its rights to expropriation compensation as aforesaid, the Lessee shall at its own expense perform all work necessary to reconstruct such remaining portions practicably and economically and the provisions of Section 6.04 herein shall apply to such work. The Lessor and Lessee shall inform each other fully of the claims for compensation made by each of them in the event of any expropriation and shall not claim compensation on any basis inconsistent with this lease, and shall afford reasonable cooperation to each other in the prosecution of any proper separate claims. Any compensation related to the Improvements shall reflect the right of the Lessor thereto at the end of the term.

ARTICLE VIII

INSPECTION

Section 8.01: Inspection and Exhibition by Lessor

The Lessor, its architects, agents and employees

shall have the right to enter on the demised premises and the Improvements during usual business hours for the purpose of inspection and ascertaining the condition or state of repair thereof or verifying that the provisions of this lease are being complied with and the Lessee covenants upon reasonable notice to permit access for these purposes. The Lessor shall be entitled to exhibit the Improvements at any time during usual business hours to actual or prospective purchasers, mortgagees or encumbrancers of the Lessor's interest and estate, and the Lessee shall upon reasonable notice permit access for this purpose. During the final year of the term the Lessor may show prospective tenants or purchasers through the Improvements and demised premises during usual business hours and shall be entitled to display upon the Improvements and the demised premises signs advertising the demised premises and Improvements as being available for purchase or lease provided such signs are displayed in such a manner as not to interfere unreasonably with the conduct of the Lessee's business.

ARTICLE IX

UNAVOIDABLE DELAYS

Section 9.01: Force Majeure

If by reason of strike, lockout, war, rebellion, material or labour shortage due to national emergency, fire, flood, wind, water or other casualty or by any other matter not within its control and not caused by its default or act of commission or omission and not avoidable by reasonable effort or foresight, the Lessee is in good faith and without default or neglect on its part prevented or delayed in the completion of any repair of the Improvements which under the terms of this lease it is required to do by a specified date or within a specified period of time, the date or period of time within which the work was to have been completed may be extended on

a certificate of the architect in charge of the same by a period of time equal to that of such delay or prevention, and the Lessee shall not be deemed to be in default if it performs and completes the work in the manner required by the terms of this lease within such extended period of time or within such further extended period as may be agreed upon from time to time between the Lessor and the Lessee.

ARTICLE X

INDEMNITY

Section 10.01: Exemption of Lessor from Liability
and Indemnity by Lessee

The Lessor shall not be liable or responsible in any way for personal or consequential injury of any kind whatsoever that may be suffered or sustained by the Lessee or any tenant, employee, agent or invitee of the Lessee or any other persons who may be upon the demised premises or the Improvements or for any loss, theft, damage or injury to any property upon the demised premises or Improvements (except for any claim arising from the negligence of an officer, employee or servant of the Lessor while acting within the scope of his duties or employment). The Lessee shall indemnify the Lessor against all claims by any person arising from the operation of the Improvements or any defect or want of repair therein or any want of maintenance thereof or anything done or omitted to be done on the demised premises or the Improvements (including any adjoining sidewalks) or any other thing whatsoever related thereto (except for any claim arising from the negligence of an officer, employee or servant of the Lessor while acting within the scope of his duties or employment) whether arising from any breach or default or from any negligence by the Lessee, its tenants, agents, contractors, employees, invitees or licensees or from any accident, injury or damage or any other cause whatsoever

related thereto; and such indemnity shall extend to all costs, legal fees, expenses and liabilities which the Lessor may incur with respect to any such claim.

ARTICLE XI

ASSIGNMENT BY LESSOR

Section 11.01: Right of Lessor to Assign or Encumber

Nothing contained in this lease shall prohibit or restrict the Lessor or shall imply any such prohibition or restriction from assigning, syndicating, mortgaging, encumbrancing or otherwise dealing with its reversionary interest in the demised premises and the Improvements, but subject always to this lease and all the rights of the Lessee hereunder and in particular Section 5.01 hereof. The Lessee shall promptly, whenever from time to time requested by the Lessor, execute an acknowledgement or certificate in favour of any actual or prospective purchaser, mortgagee, encumbrancer of the Lessor's interest, acknowledging or certifying as to the status of this lease, as to any modifications thereof, as to any breaches of covenant known to the Lessee and as to the state of the rent account, with the intent that any such acknowledgement or certificate may be relied upon by the person to whom it is addressed.

ARTICLE XII

SUBLETTING AND ASSIGNING

Section 12.01: Lessee's Rights of Subletting and Assigning

Except as provided for in Article XVI hereof the Lessee shall not have the right to assign this lease or sublet any part of the demised premises without the prior written consent of Lessor which consent may be unreasonably withheld.

Provided that:

- (a) The Lessee shall have the right to transfer its interest under this lease or to sublet space in its department store to a subsidiary or parent (provided that the net worth of such parent or subsidiary corporation is not less than the net worth of the Lessee at the time of such transfer or sublease to be established by the certificate of a firm of chartered accountants satisfactory to the City) corporation or corporations of the Lessee, to a corporation or corporations under the same ownership as the Lessee (provided that the net worth of such corporation or corporations under the same ownership as the Lessee is not less than the net worth of the Lessee at the time of such transfer or sublease to be established by the certificate of a firm of chartered accountants satisfactory to the City) or during the first period of the term to a purchaser of substantially all of the assets of the Lessee in Ontario or during the second, third and final periods of the term to a purchaser of substantially all of the assets of the Lessee in the City of Hamilton but no transfer or subleasing or grant of concession shall in any way relieve or release the Lessee from its obligations under this lease and the Lessee agrees to maintain an excess of current assets over current liabilities at all times during the term of this lease of more than ten million dollars, such excess to be established from time to time at the reasonable request of the Lessor by a certificate of a firm of chartered accountants satisfactory to the Lessor stating that they have examined the balance sheet of the Lessee and established such excess.
- (b) The Lessee shall have the right to sublet or grant concessions in the Lessee's department store to retailers other than those referred to in Clause (a) so long as such space in the aggregate does not exceed 20 per cent of the net

rentable area of that portion of the Lessee's department store located on the demised premises and the business conducted therein is under the supervision of the Lessee. provided that notwithstanding anything hereinbefore contained the Lessee's department store shall not be used for any purpose other than a department store which shall be carried on under a name the dominant word in which shall be either "Eaton" or "Eatons" except in the event that this lease is assigned to a purchaser of substantially all the assets of the Lessee in Ontario during the first period of the term or to a purchaser of substantially all of the assets of the Lessee in the City of Hamilton during the second, third and final periods of the term, in which case the dominant word in such name shall be the dominant word in the principal retailing name of such purchaser.

ARTICLE XIII

BANKRUPTCY

Section 13.01: Bankruptcy of the Lessee

If the term hereby granted shall at any time be seized or taken in execution by any creditor of the Lessee or if the Lessee shall make a general assignment for the benefit of creditors, or if it shall institute proceedings to subject itself to the Winding-Up Act or to be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall file an application or petition or answer or consent seeking re-organization or readjustment of its indebtedness under the Bankruptcy Act or the Companies' Creditors Arrangement Act or any law of Canada or any province thereof relating to bankruptcy or insolvency or shall consent to the filing of any such application or petition or shall consent to the appointment of a receiver or if the Lessee or its directors shall pass any resolution authorizing the dissolution or the winding up of the Lessee or if a receiver, interim receiver,

trustee or liquidator of all or substantially all of its property shall be appointed or applied for by it, or if a judgement, decree, or order shall be entered by a court of competent jurisdiction, adjudging it a bankrupt or insolvent or subject to the provisions of the Winding-up Act or the Bankruptcy Act or determining that proceedings for re-organization, arrangement, adjustment, composition, liquidation, dissolution or winding up or any similar relief under the Bankruptcy Act or the Companies' Creditors Arrangement Act or any law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted otherwise than by the Lessee, and any such appointment, judgement, decree, order or process remains unstayed or undischarged for a period of 30 days, then subject to Section 15.03 hereof the rent for the three months next ensuing after the then current month shall immediately become due and payable and the lease shall at the option of the Lessor immediately become terminated.

ARTICLE XIV

CHANGES IN DEMISED PREMISES

Section 14.01: Additions to and Deletions from the Area of the Demised Premises

The Lessor and the Lessee agree that from time to time as may be considered by them to be necessary or desirable for the purpose of the construction and erection or use or operation of the Improvements or for other purposes approved by the Lessor and the Lessee, the Lessor may lease to the Lessee and the Lessee may take and rent from the Lessor, any additional amount or interest in land or easement or right in the nature of an easement and that in such event the Lessor and the Lessee will execute a supplemental lease therefor for the balance of the term hereof and upon and subject to such conditions as may then be agreed upon and otherwise subject to the conditions of this lease and amending Schedule A hereto, by adding thereto

any such additional land or interest in land or easement or other right, and any such supplemental lease shall form a part of this lease and be read together with this lease. The Lessor and the Lessee agree that from time to time, as any land or interest in land or easement or right in the nature of an easement may be agreed by both of them to be unnecessary for the purposes of the construction and erection or use or operation of the Improvements, the Lessor and the Lessee will execute a partial surrender of this lease excepting such land or interest in land or easement or other right from the provisions of this lease and amending Schedule A hereto by deleting therefrom any such land or interest in land or easement or other right; and any such partial surrender of lease shall form a part of this lease and be read together with this lease.

ARTICLE XV

DEFAULT

Section 15:01: Right of Re-Entry

- (a) If the Lessee shall fail or neglect to perform or comply with any of the terms, covenants or conditions contained in this lease (other than the covenants to pay rent or taxes) on the part of the Lessee to be performed or observed, the Lessor shall notify the Lessee, and any mortgagee who has filed the notice referred to in Section 15.03(a) hereof in writing accordingly. Such notice and the notice referred to in Section 15.01(b) hereof shall not be a valid notice for purposes of the lease unless it is also given to any such mortgagee. Such notice having been given, the Lessee shall
 - (i) forthwith after receipt of such notice commence to remedy the breach complained of in such notice and prosecute the same to completion with reasonable diligence and in any event within 60 days after the giving of such notice; or

- (ii) if more than such 60 days are reasonably required to remedy, with reasonable diligence, the breach complained of in such notice, forthwith after receipt of such notice commence to remedy the same and prosecute the same to completion with reasonable diligence; or
- (iii) notify the Lessor within 15 days after the giving of such notice by the Lessor that the Lessee disputes the matters contained in the aforesaid notice given by the Lessor, in which case unless otherwise agreed such issues shall be determined by arbitration as herein provided; if such determination be adverse to the Lessee, wholly or in part, the Lessee shall forthwith commence to correct the matters complained of by the Lessor, or that portion thereof as to which such determination shall have been adverse to the Lessee, and complete the same within 60 days after such determination or, if more than such 60 days are reasonably required to complete such correction, commence to correct the same within such 60 days and prosecute the same to completion with reasonable diligence; and if so requested by either party, the arbitrator shall as part of his determination under this item (iii) establish a time reasonably required for such completion, and if such time be established, the same shall be completed within such time, except that such time shall be extended to the extent that the parties hereto may agree in writing; provided that, if in the opinion of the Lessor there would be danger that the demised premises or the Improvements would be materially injured or that the Lessor's interest in the demised premises or the Improvements or under this lease would be materially impaired or endangered by reason of delay in curing the alleged

default whether the matter has been submitted to arbitration or otherwise, the Lessor may cure the default, and, if the determination by arbitration is adverse to the Lessee, all reasonable expenses incurred by the Lessor in curing the default shall be a sum of money which sum together with interest thereon from the date such expenses are paid at the rate provided for in Section 3.09 hereof shall be additional rent, and shall be paid by the Lessee to the Lessor within 7 clear days after the Lessor shall make demand for payment thereof by the Lessee, and such curing of the default by the Lessor shall, subject to Section 15.02, not constitute a waiver of the default or affect any of the Lessor's rights or remedies with respect thereto. If any such default or neglect is not cured as aforesaid the Lessor or the Lessor's agents or employees authorized by it at its option may terminate this lease and may immediately or at any time thereafter re-enter the demised premises and Improvements with or without process of law and take possession thereof, subject to and with the benefits of all existing subleases of the demised premises and Improvements, and subject as aforesaid, the Improvements shall be forfeited to and become the property of the Lessor as liquidated damages without compensation therefor to either the Lessee or the Mortgagee. Such re-entry and repossession shall not work a forfeiture or waiver of the rents to be paid and the covenants to be performed by the Lessee up to the date of such re-entry and repossession.

- (b) If the basic annual rent, additional rent or any other sums required to be paid to the Lessor by any provision of this lease shall not be paid on any day when such payment is due, the Lessor shall forward notice in writing of

such failure to the Lessee and any mortgagee of whom the Lessor has notice and if the failure, notice of which has been given, is not cured within 30 days after the date of receipt of such notice, the Lessor may, at the end of the said period of 30 days, give to the Lessee, and any such mortgagee a notice of intention to end the term, specifying a day not less than 30 days nor more than 60 days thereafter whereupon if the default or neglect is not cured, or if this lease shall expire or be forfeited or be terminated by any other provision in it contained, the Lessor or the Lessor's agents or employees authorized by it may, subject to Section 15.03, at its option terminate this lease and may immediately or at any time thereafter re-enter the demised premises and Improvements with or without process of law and take possession thereof, subject to and with the benefits of all existing subleases of the demised premises and Improvements, and subject as aforesaid, the Improvements shall be forfeited to and become the property of the Lessor as liquidated damages without compensation therefor to either the Lessee or the Mortgagee.

Section 15.02: Lessor's Right to Cure Defaults

The Lessor shall have the right at all times to enter the demised premises and Improvements for the purpose of curing any default of the Lessee, and no such entry for such purpose shall be deemed to work a forfeiture or termination of this lease unless the Lessor otherwise expressly elects in writing, and the Lessee shall permit such entry. The Lessor shall give not less than seven days' notice in writing to the Lessee of its intention to enter for such purpose but may enter upon a shorter period of notice or without notice where in the Lessor's reasonable judgment there is real or apprehended emergency or danger to persons or property, or where any delay in remedying such default would or might materially prejudice the Lessor.

The Lessee shall reimburse the Lessor upon demand for all expenses incurred by the Lessee in remedying any default, together with interest thereon at the rate provided for in Section 3.09 hereof from the date incurred until paid. The Lessor shall be under no obligation to remedy any default of the Lessee and shall not incur any liability to the Lessee for any act or omission in the course of its remedying or attempting to remedy any such default unless such act amounts to negligence of the Lessor.

Section 15.03: Notice To and Remedies of Mortgagees

- (a) Any mortgagee may file with the Lessor written notice of its mortgage specifying therein an address for any notices to be given by the Lessor to the mortgagee and thereafter no re-entry, forfeiture or termination of this lease by the Lessor shall be valid as against such mortgagee unless the Lessor shall first have given the mortgagee notice of the default or contingency entitling the Lessor to re-enter, terminate or forfeit this lease and of the Lessor's intention to take such proceedings, and requiring the mortgagee to cure the default. The mortgagee shall thereafter have such time as may be reasonably necessary to cure the default and which shall include the time otherwise permitted to the Lessee to cure such default as well as, if requested by the mortgagee, such time as may be required by the mortgagee to realize on its security under such mortgage and which in any event shall not be less than 3 months, and the mortgagee shall be permitted access to the demised premises and Improvements for that purpose. If the default is cured within such time, the mortgagee shall be entitled to continue as Lessee for the balance of the term remaining at the date of notice of default, provided that it attorns as Lessee to the Lessor and undertakes to be bound by and to perform the covenants under this lease;

- (b) If this lease shall be subject to termination or forfeiture pursuant to Section 13.01 the Lessee's default shall be deemed to have been sufficiently cured if the mortgagee shall, as against the Lessee, take possession and control of the demised premises and Improvements, assume the lease and covenant with the Lessor to perform all the obligations of the Lessee thereunder and cure any default by the Lessee within the period specified;
- (c) Any re-entry, termination or forfeiture of this lease made in accordance with the provisions of this lease as against the Lessee shall be valid and effectual against the Lessee even though made subject to the right of any mortgagee of the Lessee's interest to cure any default of the Lessee and continue as Lessee under this lease.

ARTICLE XVI

FIRST MORTGAGE

Section 16.01: Additional Restrictions Respecting Mortgaging and Encumbrancing by the Lessee

The Lessee may at any time and from time to time mortgage or encumber its interest in the demised premises, the Improvements and this lease by a mortgage by way of assignment, sublease or otherwise and any mortgagee or assignee of a mortgagee may, whether such mortgaged interest was derived through the mortgagee following the realization by the mortgagee of the security of the mortgage or by the exercise of the power of sale in the mortgage or otherwise, by assignment, sublease or otherwise sell or transfer such mortgaged interest and so on from time to time, provided the following conditions have been complied with:

- (a) The mortgagee or encumbrancer shall covenant with the Lessor to be bound by all the covenants and obligations of the Lessee hereunder as soon as such mortgagee or encumbrancer enters into possession of the Lessee's interest, or otherwise takes steps to enforce its security which have the effect of depriving the Lessee of the ability fully to perform

those covenants and obligations, and upon the sale or transfer of the mortgaged interest following the realization by the mortgagee of the security of the mortgage or by the exercise of the power of sale in the mortgage or otherwise, the assignee of the mortgaged interest shall covenant with the Lessor to perform all the Lessee's obligations under this lease but so soon as the assignee becomes bound by the Lessee's obligations, the mortgagee or encumbrancer shall be relieved from its covenant;

- (b) Every mortgage or encumbrance of the Improvements shall be made expressly subject to the rights of the Lessor under this lease, and in particular to the right of the Lessor to acquire title thereto upon expiration or termination of this lease, in accordance with the provisions of this lease;
- (c) The mortgage or encumbrance upon the Lessee's leasehold interest and the demised premises and the Improvements shall not include any property except the Lessee's interest in this lease, subleases hereunder, the demised premises and the Improvements and fixtures, and chattels of the Lessee situate thereon;
- (d) The mortgage shall be a first mortgage, the only second mortgage permitted hereunder being the second mortgage to the Lessor to secure arrears of ground rent as hereinafter provided;
- (e) The terms of the said mortgage and the amount thereof shall be subject to the reasonable approval of the Lessor.

Section 16.02: Postponement

The Lessee shall use its best efforts and exercise all due diligence to arrange its initial first mortgage financing without any postponement respecting any of the rent payable under this lease. It is agreed however that if the Lessee cannot arrange its initial first mortgage financing upon practical

and business-like terms without such a postponement then a postponement of the rent payable hereunder except the first \$1,000 per annum shall be granted by the Lessor upon the request in writing of the Lessee provided that:

- (a) Such first mortgage financing shall be with one or more recognized financial institutions, authorized to make mortgage loans in the Province of Ontario and the interest rate shall not exceed the then current interest rate for mortgage loans on premises similar to the demised premises;
- (b) Such postponed rent shall not include the first \$1,000 per annum payable hereunder and shall not include any taxes or other payments payable as additional rent under this lease;
- (c) Such mortgage shall provide for equal monthly or quarterly instalments to amortize the loan over a period of not more than 45 years and not less than 35 years and shall not contain any power of sale except upon at least thirty days' notice in writing to the Lessor;
- (d) Such postponement shall only relate to the payments referred to in clause (c) above and shall not relate to any amount of principal or interest accelerated by default;
- (e) The mortgagee shall have entered into an agreement satisfactory in form and substance to the Lessor whereunder it shall agree with the Lessor that if such postponement shall occur any moneys received by the mortgagee shall be received by it as if it were a mortgagee of a freehold in possession under the laws of the Province of Ontario and the mortgagee accordingly agrees so to account to the Lessor and pay to it all moneys to which the Lessor is entitled on such basis. The mortgagee shall further agree periodically, at the request of the Lessor, to report to the Lessor on the standing of the mortgage and to give sixty days written notice to the Lessor should it intend to avail itself of its right to postpone;

- (f) Such postponement shall only relate to the initial first mortgage financing provided that the Lessor shall not be required to postpone its interest as aforesaid in favour of any mortgage which matures later than 45 years after the commencement of the term hereby demised;
- (g) Any arrears of such postponed ground rent shall bear interest at the first mortgage rate and shall be secured by a second mortgage payable on demand.

Section 16.03: Lessee to Comply with Lease,
Mortgage and other Obligations

The Lessee shall observe and perform all its covenants and obligations incurred in respect of assignments, subleases, agreement for tenancy, the first mortgage of the demised premises and Improvements, and shall not suffer or allow any such obligations to be in default, and if any such default shall occur, the Lessor may, but shall not be obliged to, rectify such default for the account of the Lessee, and any amount paid by the Lessor in so doing, together with all reasonable costs and expenses of the Lessor, shall be reimbursed to the Lessor by the Lessee on demand together with interest at the rate provided for in Section 3.09 hereof from the date incurred until paid, and may be recovered as if it were rent in arrears.

ARTICLE XVII

ARBITRATION

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Section 17.01: Arbitration

If the Lessor and the Lessee do not agree as to any of the matters which are by the provisions hereof to be determined by arbitration, any such disagreement shall be decided by a single arbitrator pursuant to the provisions of The Arbitrations Act, Revised Statutes of Ontario, 1960, Chapter 18, and amendments thereto.

ARTICLE XVIII

TITLE

Section 18.01: Acceptance of Title

The Lessee acknowledges that it has examined title to the demised premises and is satisfied therewith and waives any objections to title in connection therewith.

ARTICLE XIX

SURRENDER OF DEMISED PREMISES AND THE IMPROVEMENTS

Section 19.01: Surrender

At the end of the term hereby granted, either by forfeiture, default or lapse of time, the Lessee shall surrender the demised premises and the Improvements to the Lessor in the condition in which they are required to be kept by the Lessee under the provisions of this lease, except as herein otherwise expressly provided.

ARTICLE XX

OVERHOLDING

Section 20.01: Overholding

It is agreed that if upon the determination of this lease by passage of time, the Lessor permits the Lessee to remain in possession of the demised premises and accepts rent in respect thereof, a tenancy from year to year or otherwise shall not be created by implication of law, and the Lessee shall be deemed to be a monthly tenant only at the then current rent.

ARTICLE XXI

NOTICE

Section 21.01: Notice

Any notice in writing required or permitted to be

given to the Lessee hereunder shall be sufficiently given if delivered to an officer of the Lessee personally or mailed by registered mail, postage prepaid addressed to The Company Secretary, Head Office, The T. Eaton Company Limited, 190 Yonge Street, Toronto, Ontario. Any such notice mailed as aforesaid shall be deemed to be given to the Lessee on the second business day following the date of such mailing.

Any notice in writing required or permitted to be given to the Lessor shall be sufficiently given if delivered to the City Clerk personally or mailed by registered mail, postage prepaid, addressed to the Lessor, care of City Clerk, The Corporation of the City of Hamilton, City Hall, Hamilton, Ontario. Any such notice mailed as aforesaid shall be deemed to have been given to the Lessor on the second business day following the date of such mailing.

Any party may at any time give notice to the other parties of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address of such party.

ARTICLE XXII - MISCELLANEOUS

Section 22.01: Remedies to be Cumulative

It is expressly understood and agreed that the remedies of the Lessor under this lease are cumulative and the exercise by the Lessor of any right or remedy for the default or breach of any term, covenant, condition or agreement herein contained shall not be deemed to be a waiver of or to alter, affect, or prejudice any other right or remedy or other rights or remedies, to which the Lessor may be lawfully entitled for the same default or breach; and any waiver by the Lessor of the strict observance, performance or compliance by the Lessee of or with any term, covenant, condition or agreement herein contained, or any indulgence granted by the Lessor to the Lessee shall not be deemed to be a waiver of any subsequent default or breach by the Lessee, nor entitle the Lessee to any similar indulgence theretofore granted.

Section 22.02: Relationship of Parties

It is understood and agreed that the provisions contained in this lease shall not be deemed to create any relationship other than that of landlord and tenant as to the demised premises.

Section 22.03: Time of Essence

Time shall be of the essence of this lease, save as herein otherwise specified.

Section 22.04: Amendment

This lease may not be modified or amended except by an instrument in writing of equal formality herewith executed by the parties hereto or by their successors or assigns.

Section 22.05: Binding Effect

It is further agreed and declared that these presents shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns as limited in this lease.

Section 22.06: Counterparts

This lease may be executed in several counterparts each of which when executed by the parties shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF the parties have hereunto caused to be affixed their respective corporate seals attested by the signatures of their respective proper officers duly authorized for such purpose.

CORPORATION OF THE CITY OF HAMILTON

By _____
Mayor

City Clerk C.S.

THE T. EATON COMPANY LIMITED

By _____

C.S.

SCHEDULE "A"

ALL AND SINGULAR those certain parcels or tracts of land and premises, situate, lying and being in the City of Hamilton, County of Wentworth, Province of Ontario and being composed of part of Andrew Miller's Survey (Seven Acre Tract) registered in the Registry Office for the Registry Division of the County of Wentworth as Plan No. 50, in the block bounded by Merrick and James Streets, Market Square (formerly York Street) and MacNab Street, and part of Market Square (formerly York Street) now closed by City of Hamilton By-law No. 70-279 dated September 29th, 1970 and registered as Inst. No. 182921 A.B., and which said parcels may be more particularly described as follow:-

First:-

All of Part 4 according to Reference Plan R-234 received and deposited in the aforesaid Registry Office on the
day of 1971.

Secondly:-

All of Parts 2 and 3 according to Reference Plan No. R-234 received and deposited in the aforesaid Registry Office on the
day of 1971.

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